

MICHAEL L. ROSS LAW OFFICE

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953-1 Bar Harbor Road  
Trenton, Maine 04605

Northeast Harbor, Maine

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June 14, 2010

Mr. Hancock Fenton  
Chairman, Board of Appeals  
Lamoine Town Hall  
606 Douglas Hwy  
Lamoine, ME 04605

Re: Appeal of Doug Gott & Sons Site Plan and Gravel Permit Denials

Dear Mr. Fenton and Members of the Board;

I enclose the following documents to supplement the appeals materials submitted on behalf of the appellant, Doug Gott & Sons, on May 5, 2010:

1. The Application for Site Plan Review and Application for Gravel Extraction Permit, Stephens Pit, Map 3, Lot 8, prepared by Herrick & Salsbury, Inc. Land Surveyors;
2. Hydrogeological Services Report Proposed Billings Gravel Pit Expansion, Route 184, Lamoine, prepared by S.W. Cole Engineering, Inc.;
3. Site Plan Stephens Pit Showing Tax Map 3, Lot 8 prepared by Herrick & Salsbury, Inc., Land Surveyors;
4. Sand and Gravel Aquifers Document, Maine Geological Survey, Open File #81-54;
5. Receipt from Town of Lamoine for Application as well as Notice of Public Hearing before the Planning Board;
6. Letters dated November 13, 2009 and November 10, 2009 involving Michael Garrett, Secretary Planning Board;
7. Minutes of Lamoine Planning Board Meeting March 2, 2010;
8. Lamoine Planning Board, April 13, 2010 Findings Re: Map 3, Lot 8, Stephens Lot Application for Site Plan Review Permit;

9. Addendum to Appeal to Board of Appeals Application Doug Gott & Sons; and
10. Holt comments, March 2, 2010 Site Plan Review Gott Application for Gravel Permit of Stephens Lot.

Please recall that this is a two-pronged appeal, based on the Planning Board's denial of the appellant's site plan permit application, as well as the gravel permit application. The basis of the appeals is set forth in the addendum to the May 5<sup>th</sup> appeal application.

Our position is that the Planning Board's denials were erroneous for several reasons, including:

- Erroneous application of Section J.6 of the Site Plan Review Ordinance, buffering and screening requirements;
- Erroneous application of Section J.10 of the Site Plan Review Ordinance, groundwater protection;
- Erroneous application of Section J.16 of the Site Plan Review Ordinance, Comprehensive Plan compliance;
- Erroneous application of Section 7.D.6 of the Gravel Ordinance, adverse effects on surrounding properties.

I respectfully request the Board of Appeals, as it considers this case, take note that particular weight was given by the Planning Board to the written comments submitted by board member John Holt. Mr. Holt stated:

Considered as a discrete, particular project, I am hard pressed to find any reason to deny the permit. The applicant has present information which has assured me, to a large degree, that the quality and quantity of the water contained in the aquifer beneath the surface will not be adversely affected nor will the quality and quantity of the water for the neighbors to the north and west be adversely affected by the proposed evacuation and the storage of gravel, loam, and sand.

Mr. Holt goes on to say, however, that despite the fact that sand and gravel extraction is an allowable activity in this particular zone, this project should be denied because it would not be "in keeping with the spirit of the Town's Comprehensive Plan," and "[t]here is no compelling need for this particular parcel to be permitted as a gravel pit."

Based on the meeting minutes and the video tapes, it is apparent that this was the general feeling of the Board, and certainly was the primary basis for the denials. As I stated in the appeal application addendum, the Maine Law Court has specifically ruled that a town may not impose performance standards based on its Comprehensive Plan upon an applicant. *Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30 § 24. Additionally, there is no standard in either ordinance which calls for a finding of a "particular need" for a commercial operation in

Hancock Fenton  
June 14, 2010  
Page 3

order to approve such a permit. The Planning Board overstepped its boundaries by essentially making a policy decision about the zoning of the area in general rather than simply deciding the merits of the applications. If the Planning Board believes this area should not contain any further gravel extraction uses, that issue is appropriately addressed by a land use ordinance, not a particular permit application. Accordingly, the Planning Board's decision is erroneous and should be overturned.

I look forward to meeting with you and discussing this matter further at the Public Hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael L. Ross", with a stylized, flowing script.

Michael L. Ross

MLR:pg  
Enclosures

cc: Timothy Gott  
Steve Salsbury

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\_\_\_\_\_  
Northeast Harbor, Maine

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June 14, 2010

Stu Marckoon, Adm. Asst. to the Selectmen  
Lamoine Town Office  
606 Douglas Highway  
Lamoine, Maine 04605

Dear Stu:

I enclose with this letter the complete submission for consideration by the Board of Appeals together with a letter addressed to Mr. Hancock Fenton. I understand that you will make these documents available online for all interested parties. If it would be helpful for me to provide any additional copies of these documents, please let me know. I look forward to seeing you on the 21<sup>st</sup> of this month. I believe (possibly appropriately) that it is the longest day of the year.

Best regards,

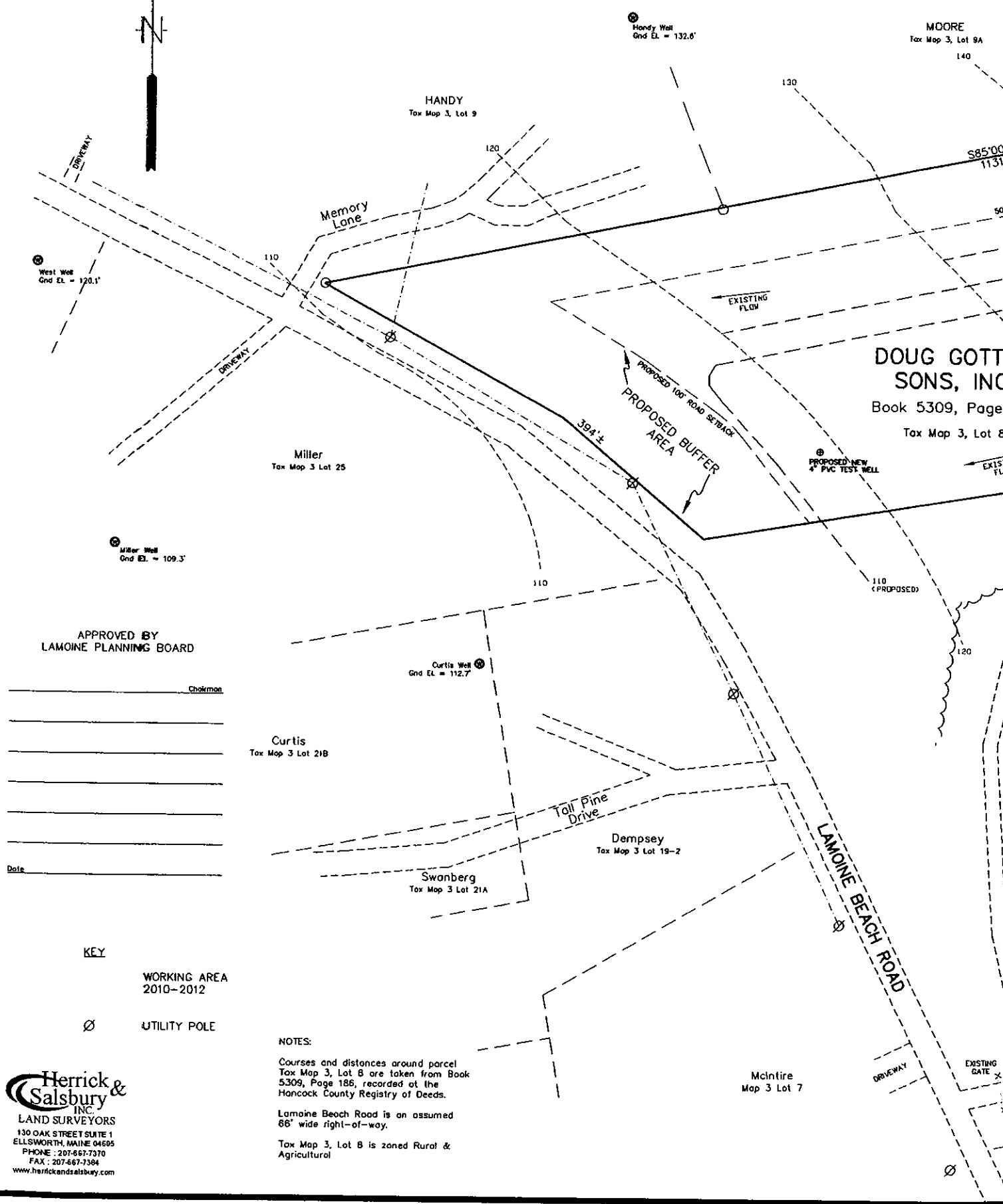
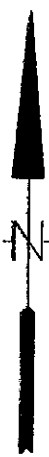


Michael L. Ross

MLR:pg  
Enclosures

cc: Timothy H. Gott  
Stephen Salsbury

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APPROVED BY  
LAMOINE PLANNING BOARD

\_\_\_\_\_  
Chairman  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
Date \_\_\_\_\_

KEY

WORKING AREA  
2010-2012

Ø UTILITY POLE

NOTES:

Courses and distances around parcel  
Tax Map 3, Lot 8 are taken from Book  
5309, Page 186, recorded at the  
Hancock County Registry of Deeds.

Lamoine Beach Road is an assumed  
66' wide right-of-way.

Tax Map 3, Lot 8 is zoned Rural &  
Agricultural

**Herrick &  
Salsbury**  
INC.  
LAND SURVEYORS  
130 OAK STREET SUITE 1  
ELLSWORTH, MAINE 04605  
PHONE : 207-667-7370  
FAX : 207-667-7384  
www.herrickandsalsbury.com

**APPLICATION FOR SITE PLAN REVIEW  
APPLICATION FOR GRAVEL EXTRACTION PERMIT**

**STEPHENS PIT  
Map 3 Lot 8**

**LAMOINE, MAINE**

**January 15, 2010**

**Applicant :**

Doug Gott & Sons, Inc.  
110 Bass Harbor Road  
Southwest Harbor, ME 04679

**Agent :**

**Herrick &  
Salsbury**  
INC.  
LAND SURVEYORS

130 Oak Street, Suite 1

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# Town of Lamoine

## Application for Site Plan Review

Owner of Record	<i>Doug Gott &amp; Sons, Inc.</i>	Address	<i>Southwest Harbor</i>
Applicant	<i>Doug Gott &amp; Sons, Inc.</i>	Address	<i>Southwest Harbor</i>
Project Name	<i>Stephens Pit</i>	Map/Lot	<i>Map 3/Lot 8</i>
Surveyor/Architect/ Engineer's Name	<i>Herrick &amp; Salsbury, Inc.</i>	Reg. Number	<i>PLS 2207</i>

In accordance with the Site Plan Review Ordinance, please submit the following information as part of this application.

1. A fully executed and signed original and seven copies of the application for site plan review.
2. The site plan (drawings) shall consist of one or more reproducible, stable base transparent originals at a scale of not less than 1" = 50' to be filed at the town office. Space shall be provided on the development plan for the signatures of the board and date.
3. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant and status of property tax payment.

*-See Deed: Page 11*

4. Existing Conditions
  - a. Zoning classification(s) (including shoreland) of the property and the location of zoning district boundaries if the property is located in two or more zoning districts or abuts a different district;

*Zone: Rural & Agricultural*

- b. The bearings and distances of all property lines of the property to be developed and the source of this information;

*-See Site Plan: Page 41*

*-See Deed Description (Source of Information): Page 11*

- c. Location and size of any existing sewer and water systems, culverts and drains, fire hydrants or pond, adjacent to property to be developed and of any that will serve the development from abutting roads or land;

*None*



- d. Location, names and widths of existing roads and rights-of-way within or adjacent to the proposed development;

*Existing Access Road: Stephens Pit Access Road*

*Existing Roads Adjacent to Property: Lamoine Beach Road (66' Right of Way) / Memory Lane*

*-See Site Plan for Road Locations: Page 41*

- e. The location of open drainage courses, wetlands, stonewalls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together with a description of such features.

*None of the above were found on site except aquifer.*

*-See Agency Letters (wildlife/plants/historic features): Page 14*

*-See Floodplain Map: Page 10*

*-For Aquifer Information; see Hydrogeological Report: Under Separate Cover*

- f. The location, dimensions and ground floor elevation of all existing buildings on the site.

*None*

- g. Topographical contours and the direction of existing surface water drainage across the site; and

*-See Site Plan: Page 41*

- h. If any portion of the property is in the 100-year floodplain, its elevation shall be delineated on the plan or provide a FEMA floodplain map.

*Site not in 100-year floodplain.*

*-See Floodplain Map: Page 10*

5. Proposed Development Activity

- a. Descriptions of all proposed uses of the development including specific uses of all structure to be built, converted or expanded.

*Development Activity: Primary uses will include the storage of sand, loam and gravel after the site is cleared and contoured as shown on the site plan. The finished grade elevation of the pit floor will be 110' (NGVD datum).*

*-See Gravel Permit Application: Page 27*

- b. The location and dimensions of all proposed buildings and structures.

*None*

- c. The size, location, direction, and intensity of illumination of all outdoor lighting.

*None*

- d. All existing and proposed setback dimensions.

*Proposed 50' setback line along northerly and easterly boundaries. Proposed 100' setback along Lamoine Beach Road. No proposed setback line along southerly boundary (waiver).*

*-See Site Plan: Page 41*

*-See Setback Waiver: Page 31*

- e. Proposed landscaping and/or buffering.

*Proposed 50' setback line along northerly and easterly boundaries. Proposed 100' setback along Lamoine Beach Road. No proposed setback line along southerly boundary (waiver).*

*-See Site Plan: Page 41*

*-See Reclamation Plan: Page 33*

*-See Landscaping/Revegetation Plan: Page 35*

- f. When subsurface sewage disposal is proposed, an on-site soils investigation report by a Maine Department of Human Services licensed site evaluator. The report shall identify the classification of soils, location of all test pits, and proposed location.

*None Proposed*

- g. The type of water supply to be used.

*None Proposed*

- h. The type, size, and location of all waste disposal or incineration devices.

*None Proposed*

- i. The type, size and location of all machinery or equipment likely to generate appreciable noise at the lot lines.

*Noise Levels will not be exceeded as outlined in Section 8, subsection H of the Gravel Ordinance, Town of Lamoine.  
-See Operations Statement, "Noise": Page 32*

- j. The amount and type of any raw, finished or waste materials to be stored outside of roofed buildings, including their physical and chemical properties, if appropriate.

*Screened or crushed aggregate and topsoil to be stored from time To time on site. See Page 32.*

- k. A schedule of construction including anticipated beginning and completion dates.

*Anticipated Begin Date: May 2010  
End Date: Indefinite*

- l. A description of how special features identified in subsection 4.e. will be maintained or impacts upon them minimized.

*The gravel pit will not impact any special features.  
-See Agency Letters (wildlife/plants/historic features): Page 14  
-See Floodplain Map: Page 10  
-For Aquifer Information: See Hydrogeological Report: Under Separate Cover*

- m. The existing and proposed method of handling storm water run-offs.

*Stephens Pit will be internally drained.  
-See Drainage Statement: Page 33*

- 6. Additional Information. The planning board may require the following when it finds that the information required in Sections I.3 to I.5 is not sufficient, to determine that the standards in Section J. can be met.
  - a. A high intensity soils report prepared by a soil scientist certified in the State of Maine.
  - b. A storm water management and erosion control plan showing:
    - i) The direction of flow of the run-off through the use of arrows.


- ii) The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers.
  - iii) Engineering calculations used to determine drainage requirements based upon the 25-year 24-hour storm frequency, if the project will significantly alter the existing drainage pattern due to such factors as the amount of new impervious surfaces (such as paving and building area) being proposed.
- c. A hydrogeologic assessment prepared by a ground water hydrologist/geologist for projects involving common on-site water supply or on-site sewage disposal of 2,000 or more gallons per day.
  - d. A utility plan showing, in addition to provisions for water supply and waste water disposal, the location and nature of electrical, telephone and any other utility services to be installed on the site.
  - e. A landscaping plan.
  - f. The location, width, typical cross-section, grades and profiles of all proposed roads and sidewalks.
  - g. Cost of the proposed development and evidence of financial capacity to complete it. This evidence should be in the form of a letter from a bank or other source of financing indicating the name of the project, amount of financing proposed, and interest in financing the project.
  - h. An estimate of the number of trips per day associated with the proposed development.

7. The appropriate fee must accompany this application.

This application must be submitted to the Lamoine Planning Board, 606 Douglas Highway, Lamoine, ME 04605 at least 10-days before the Board is to consider it at a regularly scheduled meeting.

## Signature Section

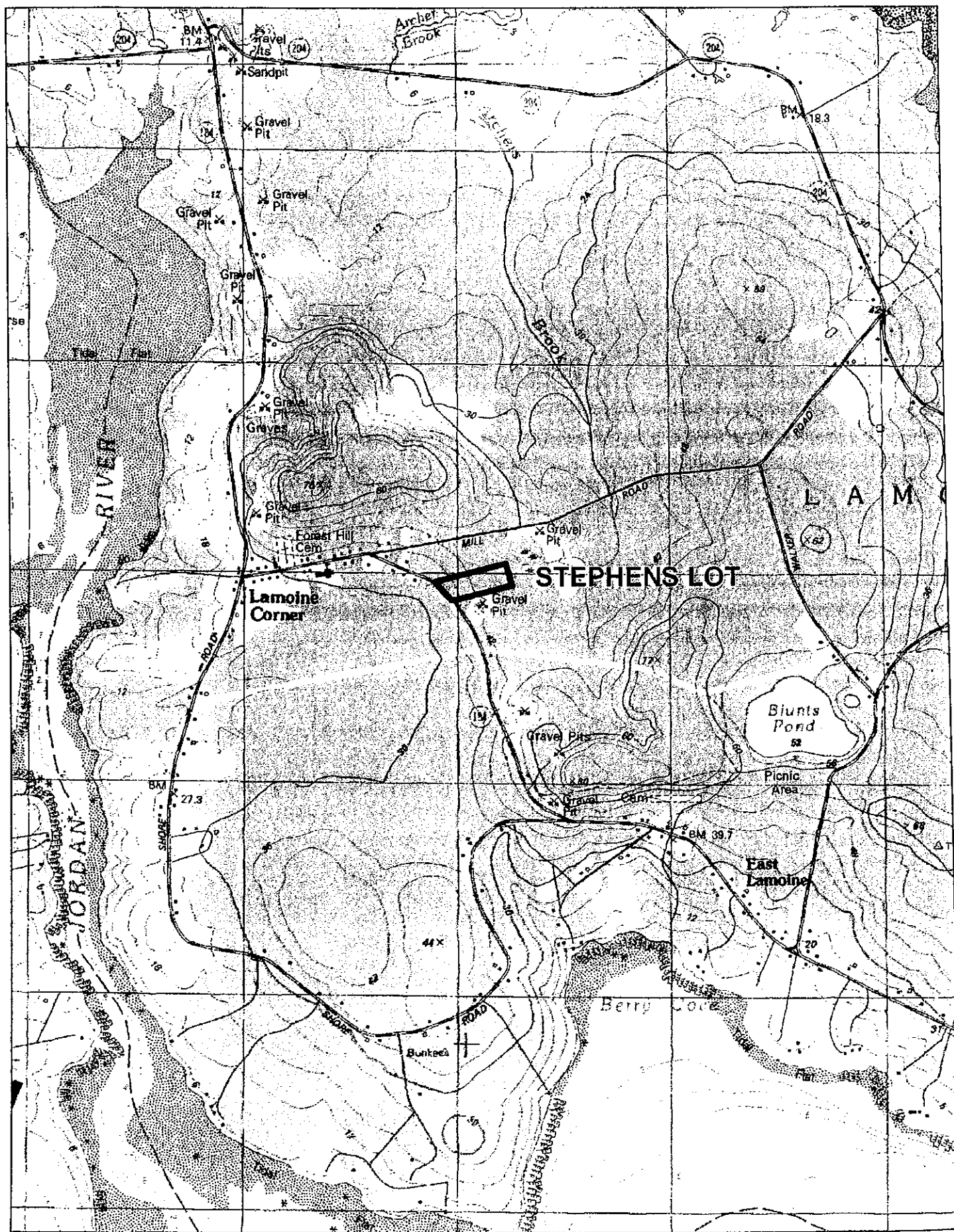
By signing this, I maintain that the information provided to the Lamoine Planning Board is true and accurate to the best of my knowledge. I understand this is a application and will be informally discussed at a Lamoine Planning Board meeting and it is a public document.

      AGENT      1/15/10  
Signature      Title      Date  
STEPHEN SALSBURY  
Printed Name

For Planning Board Use Only

Date Received by Town Office	
Date Mailed to Planning Board	
Date Scheduled for Initial Review	
Date of completeness determination	
Date abutting landowners were notified	
Date scheduled for application hearing	
Fee Amount Due	
Date Fee was paid to town treasurer	
Final Action	
Conditions – list below	

\_\_\_\_\_  
*Signature of Planning Board Chair*      *Date*

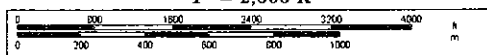


**DELORME**

© 2001 DeLorme. XMap®. Data copyright of content owner.  
Zoom Level: 13-0 Datum: WGS84

Scale 1 : 24,000

1" = 2,000 ft





## Abutters – Stephens Pit – Map 3 Lot 8

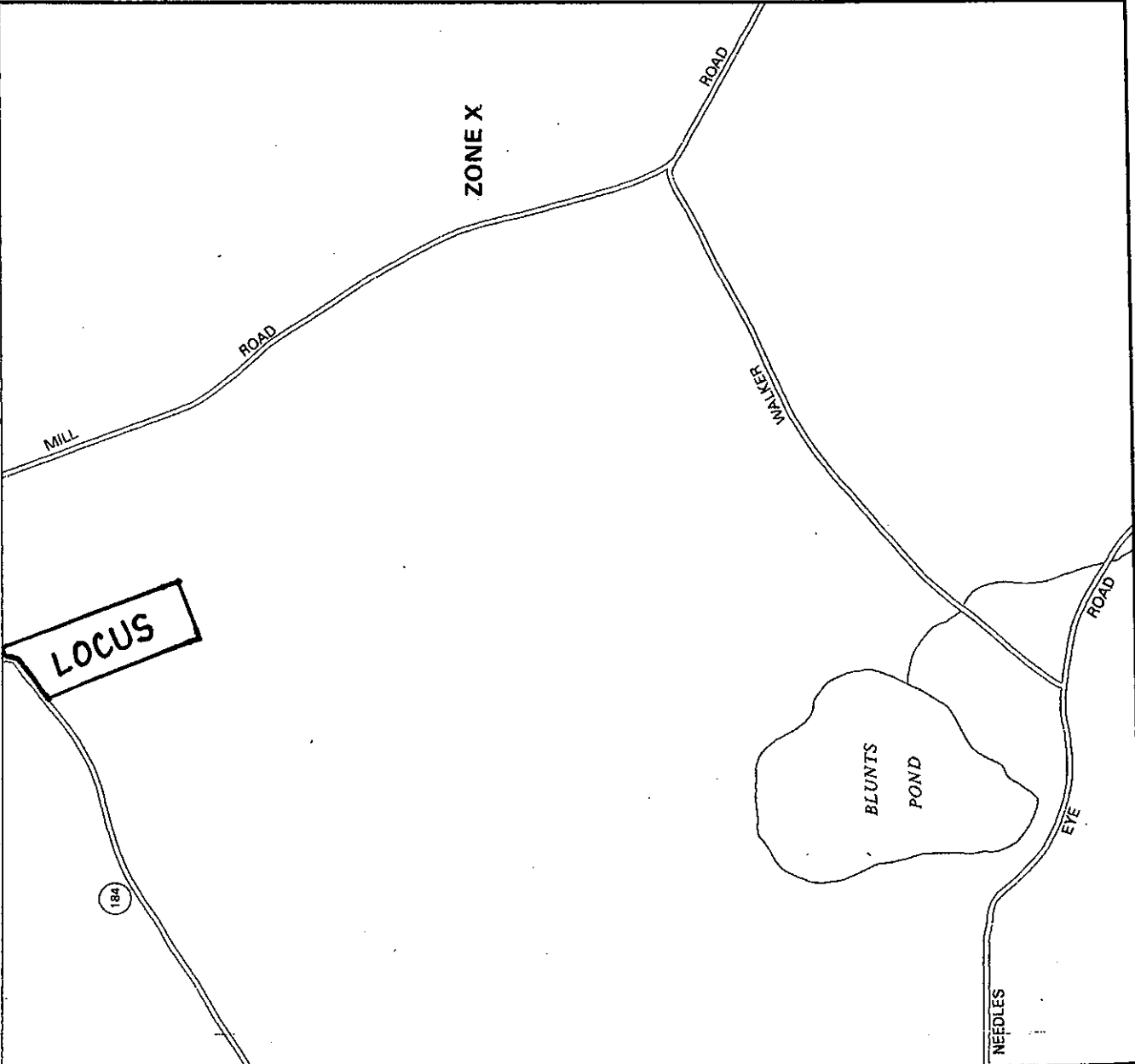
Tax Map/Lot Number	Name	Address
Map 3 Lot 9	Robert Handy Stacy Handy	14 Memory Lane, Lamoine, ME 04605
Map 3 Lot 9-1	Charles Cobb Joan Cobb	31 Mill Road, Lamoine, ME 04605
Map 3 Lot 9-2	Robert Latchaw Terry Latchaw	41 Mill Road, Lamoine, ME 04605
Map 3 Lot 9-3	Alice Upton	49 Mill Road, Lamoine, ME 04605
Map 3 Lot 9-4	James Willis Jr. Tracy Willis	57 Mill Road, Lamoine, ME 04605
Map 3 Lot 9-5	Andrea Smith	65 Mill Road, Lamoine, ME 04605
Map 3 Lot 9-6	David Byers Shannon Byers	71 Mill Road Lane, Lamoine, ME 04605
Map 3 Lot 9-7	Richard Sprague Valerie Sprague	83 Mill Road Lane, Lamoine, ME 04605
Map 3 Lot 9-8	Michael Damon	79 Mill Road, Lamoine, ME 04605
Map 3 Lot 9A	James Moore Tammy Moore	9 Memory Lane, Lamoine, ME 04605
Map 3 Lot 4-1	Reginald McDevitt Marion McDevitt	1187 Shore Road, Lamoine, ME 04605
Map 4 Lot 16	Douglas Gott	110 Bass Harbor Road, Southwest Harbor, ME 04679
Map 3 Lot 6	Douglas Gott	110 Bass Harbor Road, Southwest Harbor, ME 04679
Map 3 Lot 7	Thomas McIntire	153 Lamoine Beach Road, Lamoine, ME 04605
Map 3 Lot 19-2	Bernadette Dempsey	145 Patten Pond Road, Surry, ME 04684
Map 3 Lot 21A	Charles Swanberg Deborah Swanberg	1046 Shore Road, Lamoine, ME 04605
Map 3 Lot 21B	Cheryl Curtis	5 Tall Pine Drive, Lamoine, ME 04605
Map 3 Lot 21C	Peter Swanberg Jana Swanberg	23 Tall Pine Drive, Lamoine, ME 04605
Map 3 Lot 25	David Miller Melanie Miller	121 Lamoine Beach Road, Lamoine, ME 04605
Map 15 Lot 21	Russell Spofford Joyce Spofford	27 Mill Road, Lamoine, ME 04605
Map 15 Lot 22	Harold Boynton Sr. Nancy Boynton	P.O. Box 441, Ellsworth, ME 04605
Map 15 Lot 22-1	Lori Boynton	114 Lamoine Beach Road, Lamoine, ME 04605
Map 15 Lot 24-3	Heirs of Earl James Jr. Gordena James	97 Lamoine Beach Road, Lamoine, ME 04605
Map 15 Lot 24-4	John White Dawn White	103 Lamoine Beach Road, Lamoine, ME 04605
Map 15 Lot 24-5	Sylvia West	10 Hurds Drive, Morrill, ME 04952



**E**

JOINS PANEL 0005

**D**



APPROXIMATE SCALE



NATIONAL FLOOD INSURANCE PROGRAM

**FIRM**  
**FLOOD INSURANCE RATE MAP**

TOWN OF  
LAMOINE,  
MAINE  
HANCOCK COUNTY

PANEL 10 OF 10  
(SEE MAP INDEX FOR PANELS NOT PRINTED)



PANEL LOCATION

COMMUNITY-PANEL NUMBER  
230285 0010 A

EFFECTIVE DATE:  
MAY 2, 1991

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance program flood maps check the FEMA Flood Map Store at [www.msc.fema.gov](http://www.msc.fema.gov)

CORRECTIVE

QUITCLAIM DEED WITH COVENANT


This deed corrects a prior deed, dated December 31, 2008, recorded in Book 5114, Page 349.

KNOW ALL MEN BY THESE PRESENTS, that I, **RAY T. STEPHENS**, with a mailing address of 61 Bear Point Way, Lamoine, Maine 04605, for consideration paid grants to **DOUG GOTT & SONS, INC.**, whose mailing address is 110 Bass Harbor Road, Southwest Harbor, Hancock County, ME 04679, with Quitclaim covenant certain lot or parcel of land, together with the buildings thereon, situated in the Town of Lamoine, County of Hancock, State of Maine, described in Exhibit A incorporated hereto and made a part hereof.

This description is corrected from the earlier referenced deed.

Together with all rights, easements, privileges and appurtenances belonging to the granted estate.

WITNESS my hand and seals this 11 <sup>September</sup> day of ~~August~~, 2009.


  
Ray T. Stephens

STATE OF MAINE  
COUNTY OF HANCOCK

<sup>September</sup>  
~~August~~ 11<sup>th</sup>, 2009

Personally appeared the above named Ray T. Stephens and acknowledged the foregoing instrument to be his free act and deed.

Before me,

  
Notary Public/~~Attorney at Law~~

**SEAL**

STEPHEN E. EATON

Notary: Print or Type Name

My Commission Expires:

**STEPHEN E. EATON**

**NOTARY PUBLIC, STATE OF MAINE**

**MY COMMISSION EXPIRES MARCH 24, 2011**

**EXHIBIT A**  
**Route 184, Lamoine**  
**Hancock County, Maine**

A certain lot or parcel of land situated on the easterly side of Route 184 in the Town of Lamoine, County of Hancock, State of Maine, being more particularly described as follows:

**BEGINNING** at a  $\frac{3}{4}$ " rebar found set in or near the easterly sideline of Route 184, also known as Douglas Highway, being at a southwesterly corner of land described in a deed to Robert Aaron Handy and Stacy Marie Handy dated October 16, 2006 and recorded in Book 4619, Page 111 in the Hancock County Registry of Deeds;

**THENCE**, S  $85^{\circ}00'00''$  E along the southerly line of said land of Robert Aaron Handy and Stacy Marie Handy, along the southerly line of remaining land of James Moore, Jr. and Tammy Moore described in a deed dated May 30, 2000 and recorded in Book 2926, Page 405 in said Registry of Deeds and along the southerly line of the First Parcel of land described in a deed to Michael E. Damon, dated November 3, 1986, and recorded in Book 1608, Page 108 in said Registry of Deeds, a distance of one thousand one hundred and thirty-one and sixty-two hundredths (1,131.62') feet to a point in the westerly line of land described in a deed to Reginald L. McDevitt and Marion J. McDevitt, dated August 27, 1973 and recorded in Book 1175, Page 81 in said Registry of Deeds;

**THENCE**, S  $26^{\circ}43'05''$  W along the westerly line of said land of Reginald L. McDevitt and Marion J. McDevitt a distance of three hundred nine and eighty-one hundredths (309.81') feet to the northerly line of land described in a deed from Billings and Hamblen Company, Inc. to Douglas A. Gott, dated June 21, 1977 and recorded in Book 1290, Page 436 in said Registry of Deeds;

**THENCE**, N  $85^{\circ}00'00''$  W along the northerly line of said land of Douglas A. Gott, a distance of seven hundred fifty one (751 $\pm$ ) feet more or less to a point in the easterly sideline of Route 184,

**THENCE**, in a northwesterly direction along the easterly sideline of Route 184 a distance of three hundred ninety-four (394 $\pm$ ) feet more or less to the **POINT OF BEGINNING**.

**ALSO CONVEYING** any right, title and interest that the herein grantor may have in the right of way of Route 184, also known as the Douglas Highway.

The herein described lot or parcel of land, containing 6.13 acres more or less being all that remaining portion of land described in a deed from Emma R. Stephens to John R. Stephens

and Teresa W. Stephens, dated August 18, 1986 and recorded in Book 1597, Page 471 in the Hancock County Registry of Deeds that lies on the easterly side of Route 184, and all that

S:\GOTT, TIM\GOTT, DOUG & SONS, INC\STEPHENS RAY PURCHASE\Exhibit A - 6.13 acres.doc

remaining portion of land described in a deed from John R. Stephens and Teresa W. Stephens to Ray T. Stephens, dated September 27, 1995 and recorded in Book 2447, Page 218 in said Registry of Deeds that lies on the easterly side of Route 184.

#4<sup>(3)</sup> Ret Ross & King



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Maine Field Office – Ecological Services  
17 Godfrey Drive, Suite #2  
Orono, ME 04473  
(207) 866-3344 Fax: (207) 866-3351

FWS/Region 5/ES/MEFO

December 22, 2009

Ms. Tara Hartson  
Herrick & Salsbury, Inc.  
P.O. Box 652  
Ellsworth, ME 04605

Dear Ms. Hartson:

Thank you for your letter dated November 30, 2009 requesting information or recommendations from the U.S. Fish and Wildlife Service (Service). This letter provides the Service's response pursuant to Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250), and the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-667d).

**Project Name/Location:** Unspecified project - Lamoine, ME

**Log Number:** 53411-2010-SL-0049

### Federally Listed Species

This project occurs within the range of the Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic salmon (*Salmo salar*) in Maine, a federally-endangered species under the joint jurisdiction of the Service and the National Marine Fisheries Service (NMFS) (74 FR 29344; June 19, 2009). The Atlantic salmon GOM DPS encompasses all naturally spawned and conservation hatchery populations of anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River and wherever these fish occur in the estuarine and marine environment. Also included in the GOM DPS are all associated conservation hatchery populations used to supplement these natural populations; currently, such conservation hatchery populations are maintained at Green Lake National Fish Hatchery and Craig Brook National Fish Hatchery. Excluded are landlocked salmon (also *Salmo salar*) and those salmon raised in commercial hatcheries for aquaculture.



The proposed project site, however, is within a HUC-10 watershed (Lamoine Coastal) that has **not** been designated as critical habitat for Atlantic salmon by NMFS (74 FR 29300; June 19, 2009). Atlantic salmon are not known to currently occur in streams within this watershed, so we would not expect salmon at or near the proposed project site. The Services, however, do not have information about the potential occurrence of Atlantic salmon in coastal waters adjacent to Lamoine.

Please note that under Section 7 of the ESA, it is the federal action agency's responsibility to determine if a project may affect a federally listed species. For example, if a project needs a federal permit from the Corps of Engineers, that permitting action may provide a "nexus" for Section 7 consultation under the ESA<sup>1</sup>. If the federal action agency determines that a project would have "no effect" on a listed species or critical habitat, they do not need to seek the concurrence of the Service and there is no need for Section 7 consultation. If the federal agency determines that a project "may affect" a listed species or its critical habitat, then consultation pursuant to Section 7 of the ESA should be initiated. If a project does not have a discretionary federal action associated with it, there is no need to make a determination of effect to listed species (e.g., a "no effect" determination). For Atlantic salmon and its critical habitat, NMFS and the Service share consultation responsibilities under Section 7 of the ESA, with the Service generally handling projects in the freshwater component of the salmon's habitat and NMFS handling projects in the marine and estuarine environment (generally below the head of tide).

Based on the information currently available to us, no other federally-listed species under the jurisdiction of the Service are known to occur in the project area.

### **Other Protected Species**

Bald eagles (*Haliaeetus leucocephalus*) could occur in the project area. The nearest known bald eagle nest is about 1.3 miles to the west of the project site, on the Jordan River. The bald eagle was removed from the federal threatened list on August 9, 2007 and is now protected from take under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. "Take" means to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. The term "disturb" under the Bald and Golden Eagle Protection Act was recently defined within a final rule published in the Federal Register on June 5, 2007 (72 Fed. Reg. 31332). "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle; 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

Further information on bald eagle delisting and their protection can be found at <http://www.fws.gov/migratorybirds/baldeagle.htm>.

---

<sup>1</sup> Section 7 consultation, however, is only necessary when a federal agency takes a *discretionary* action (e.g., an agency has a choice of whether or not to fund a particular project).

Please consult with our new national bald eagle guidelines, which can found at <http://www.fws.gov/migratorybirds/issues/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>.

These Guidelines are voluntary and were prepared to help landowners, land managers and others meet the intent of the Eagle Act and avoid disturbing bald eagles. If you believe this project will result in taking or disturbing bald or golden eagles, please contact our office for further guidance. We encourage early and frequent consultations to avoid take of eagles.

We have not reviewed this project for state-threatened and endangered wildlife, wildlife species of special concern, and significant wildlife habitats protected under the Maine Natural Resources Protection Act. We recommend that you contact the Maine Department of Inland Fisheries and Wildlife:

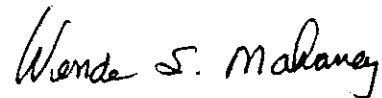
Steve Timpano  
Maine Department of Inland Fisheries and Wildlife  
284 State St.  
State House Station 41  
Augusta, ME 04333-0041  
Phone: 207 287-5258

We also recommend that you contact the Maine Natural Areas Program for additional information on state-threatened and endangered plant species, plant species of special concern, and rare natural communities:

Lisa St. Hilaire  
Maine Natural Areas Program  
Department of Conservation  
93 State House Station  
Augusta, ME 04333  
Phone: 207 287-8046

If you have any questions about this project, please contact Wende Mahaney at (207) 866-3344, Ext. 118.

Sincerely,

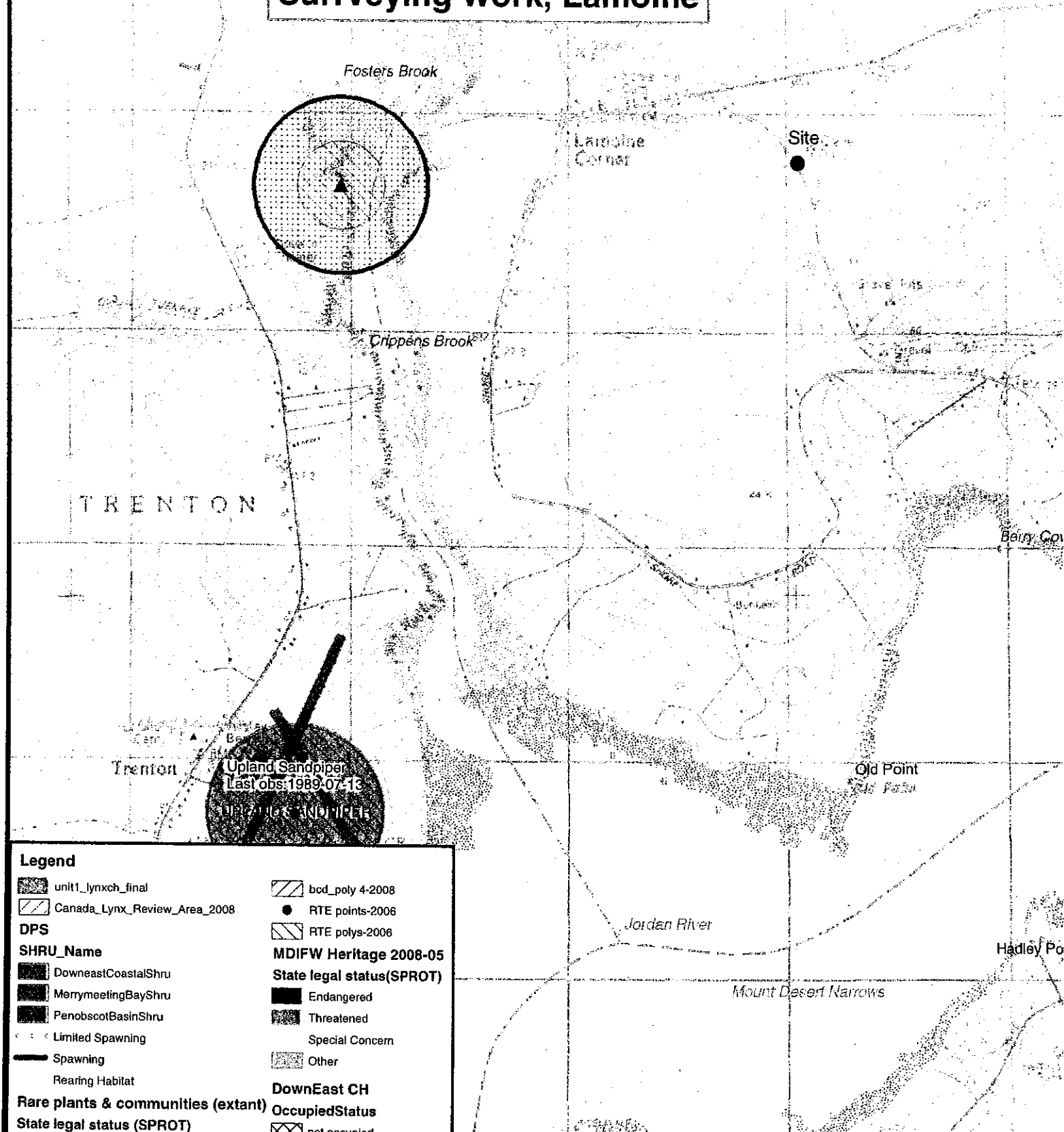


Lori H. Nordstrom  
Field Supervisor

acting for

Enclosure

# Surveying Work, Lamoine



## Legend

unit1\_lynxch\_final

Canada\_Lynx\_Review\_Area\_2008

### DPS

#### SHRU\_Name

DowneastCoastalShru

MerrymeetingBayShru

PenobscotBasinShru

Limited Spawning

Spawning

Rearing Habitat

#### Rare plants & communities (extant)

#### State legal status (SPROT)

Possibly Extirpated

Endangered

Threatened

Special Concern

other

Roseate Tern Essential Habitat 4-2008

Eagle nests 10-2007

Bald Eagle Essential Habitat 3/06

bcd\_poly 4-2008

RTE points-2006

RTE polys-2006

#### MDIFW Heritage 2008-05

#### State legal status (SPROT)

Endangered

Threatened

Special Concern

Other

#### DownEast CH

#### OccupiedStatus

not occupied

occupied; not excluded

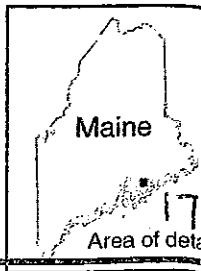
0

0.5

1

Miles

Data from USFWS, MDIFW & MNAP.







STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
93 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0093

JOHN ELIAS BALDACCI  
GOVERNOR

PATRICK K. MCGOWAN  
COMMISSIONER

December 15, 2009

Tara Hartson  
Herrick & Salsbury  
PO Box 652  
Ellsworth, Maine 04605

Re: Rare and exemplary botanical features in proximity to Lamoine Beach Road project site, Lamoine Maine.

Dear Ms. Hartson:

I have searched the Natural Areas Program's Biological and Conservation Data System files in response to your request of November 30, 2009 for information on the presence of rare or unique botanical features documented from the vicinity of the project site in the Town of Lamoine, Maine. Rare and unique botanical features include the habitat of rare, threatened, or endangered plant species and unique or exemplary natural communities. Our review involves examining maps, manual and computerized records, other sources of information such as scientific articles or published references, and the personal knowledge of staff or cooperating experts.

Our official response covers only botanical features. For authoritative information and official response for zoological features you must make a similar request to the Maine Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, Maine 04333.

According to the information currently in our Biological and Conservation Data System files, there are no rare botanical features documented specifically within the project area. This lack of data may indicate minimal survey efforts rather than confirm the absence of rare botanical features. You may want to have the site inventoried by a qualified field biologist to ensure that no undocumented rare features are inadvertently harmed.

If a field survey of the project area is conducted, please refer to the enclosed supplemental information regarding rare and exemplary botanical features documented to occur in the vicinity of the project site. The list may include information on features that have been known to occur historically in the area as well as recently field-verified information. While historic records have not been documented in several years, they may persist in the area if suitable habitat exists. The enclosed list identifies features with potential to occur in the area, and it should be considered if you choose to conduct field surveys.

This finding is available and appropriate for preparation and review of environmental assessments, but it is not a substitute for on-site surveys. Comprehensive field surveys do not exist for all natural areas in Maine, and in the absence of a specific field investigation, the Maine Natural Areas Program cannot provide a definitive statement on the presence or absence of unusual natural features at this site.

The Natural Areas Program is continuously working to achieve a more comprehensive database of exemplary natural features in Maine. We would appreciate the contribution of any information obtained should you decide to do field work. The Natural Areas Program welcomes coordination with individuals or organizations proposing environmental alteration, or conducting environmental assessments. If, however, data provided by the Natural Areas Program are to be published in any form, the Program should be informed at the outset and credited as the source.

The Natural Areas Program has instituted a fee structure of \$75.00 an hour to recover the actual cost of processing your request for information. You will receive an invoice for \$75.00 for our services.

Thank you for using the Natural Areas Program in the environmental review process. Please do not hesitate to contact me if you have further questions about the Natural Areas Program or about rare or unique botanical features on this site.

Sincerely,



Sarah Demers  
Environmental Review Coordinator  
Maine Natural Areas Program  
207-287-8670

[sarah.demers@maine.gov](mailto:sarah.demers@maine.gov)

Enclosures

# Rare and Exemplary Botanical Features in the Project Vicinity

12/15/2009

Documented within a Four-Mile Radius of the Proposed Development, Lamoine, Maine.

<u>Scientific Name</u>	<u>Last Seen</u>	<u>Global Rarity Rank</u>	<u>State Rarity Rank</u>	<u>State Protection Status</u>	<u>Habitat Description</u>
<u>Common Name</u> <i>Suaeda calceoliformis</i> American Sea-blite	1998-09-29	G5	S2	T	Rocky or gravelly saltmarshes and sea-strands.
Black spruce woodland Black Spruce Woodland	1999-09-22	G4?	S3		Open canopy woodland on bare rock, very thin soil over rock, or excessively drained gravelly deposits. Cool and moist microclimates. Moisture may accumulate in
Raised level bog ecosystem Raised Level Bog Ecosystem	1999-09-02	GNR	S4		Raised (but not concentrically patterned) peatlands in basins with mostly closed drainage. Sphagnum dominates the ground surface and is the main peat constituent.
Brackish tidal marsh Brackish Tidal Marsh	1999-09-23	GNR	S3		Intertidal reaches in coastal impoundments, or between saltmarshes and freshwater marshes in larger tidal rivers. The downstream limit of this community is usually
Brackish tidal marsh Brackish Tidal Marsh	2004-12-10	GNR	S3		Intertidal reaches in coastal impoundments, or between saltmarshes and freshwater marshes in larger tidal rivers. The downstream limit of this community is usually
<i>Oryzopsis canadensis</i> Canada Mountain-ricegrass	1897-07-14	G5	S2	SC	Dry, sandy, rocky woods
<i>Carex adusta</i> Swarthy Sedge	1898-08-17	G5	S2	E	Dry, open places.

# Rare and Exemplary Botanical Features in the Project Vicinity

12/15/2009

Documented within a Four-Mile Radius of the Proposed Development, Lamoine, Maine.

<u>Scientific Name</u>	<u>Common Name</u>	<u>Last Seen</u>	<u>Global Rarity Rank</u>	<u>State Rarity Rank</u>	<u>State Protection Status</u>	<u>Habitat Description</u>
Carex adusta		1891-06-24	G5	S2	E	Dry, open places.
	Swarthy Sedge					
Prenanthes nana		1897-08-19	G5	S1	E	Rocky or mossy exposed places in alpine areas.
	Dwarf Rattlesnake Root					
Sanguisorba canadensis		2007	G5	S1	T	Peaty or boggy soils.
	Canada Burnet					
Spruce - fir - northern hardwoods ecosystem		1999	GNR	S4		Covers most of northern Maine.
	Spruce - Fir - Northern Hardwoods Ecosystem					Coniferous-dominated and hardwood-dominated forests intergrade with one another, with conifers tending to be in the

### STATE RARITY RANKS

- S1** Critically imperiled in Maine because of extreme rarity (five or fewer occurrences or very few remaining individuals or acres) or because some aspect of its biology makes it especially vulnerable to extirpation from the State of Maine.
- S2** Imperiled in Maine because of rarity (6-20 occurrences or few remaining individuals or acres) or because of other factors making it vulnerable to further decline.
- S3** Rare in Maine (20-100 occurrences).
- S4** Apparently secure in Maine.
- S5** Demonstrably secure in Maine.
- SU** Under consideration for assigning rarity status; more information needed on threats or distribution.
- S#?** Current occurrence data suggests assigned rank, but lack of survey effort along with amount of potential habitat create uncertainty (e.g. S3?).

**Note:** State Rarity Ranks are determined by the Maine Natural Areas Program.

### GLOBAL RARITY RANKS

- G1** Critically imperiled globally because of extreme rarity (five or fewer occurrences or very few remaining individuals or acres) or because some aspect of its biology makes it especially vulnerable to extinction.
- G2** Globally imperiled because of rarity (6-20 occurrences or few remaining individuals or acres) or because of other factors making it vulnerable to further decline.
- G3** Globally rare (20-100 occurrences).
- G4** Apparently secure globally.
- G5** Demonstrably secure globally.
- GNR** Not yet ranked.

**Note:** Global Ranks are determined by NatureServe.

### STATE LEGAL STATUS

**Note:** State legal status is according to 5 M.R.S.A. § 13076-13079, which mandates the Department of Conservation to produce and biennially update the official list of Maine's **Endangered** and **Threatened** plants. The list is derived by a technical advisory committee of botanists who use data in the Natural Areas Program's database to recommend status changes to the Department of Conservation.

- E** **ENDANGERED**; Rare and in danger of being lost from the state in the foreseeable future; or federally listed as Endangered.
- T** **THREATENED**; Rare and, with further decline, could become endangered; or federally listed as Threatened.

### NON-LEGAL STATUS

- SC** **SPECIAL CONCERN**; Rare in Maine, based on available information, but not sufficiently rare to be considered Threatened or Endangered.
- PE** **Potentially Extirpated**; Species has not been documented in Maine in past 20 years or loss of last known occurrence has been documented.

Visit our website for more information on rare, threatened, and endangered species!  
<http://www.maine.gov/doc/nrimc/mnap>

## ELEMENT OCCURRENCE RANKS - EO RANKS

Element Occurrence ranks are used to describe the quality of a rare plant population or natural community based on three factors:

- **Size**: Size of community or population relative to other known examples in Maine. Community or population's viability, capability to maintain itself.
- **Condition**: For communities, condition includes presence of representative species, maturity of species, and evidence of human-caused disturbance. For plants, factors include species vigor and evidence of human-caused disturbance.
- **Landscape context**: Land uses and/or condition of natural communities surrounding the observed area. Ability of the observed community or population to be protected from effects of adjacent land uses.

These three factors are combined into an overall ranking of the feature of **A, B, C, or D**, where **A** indicates an excellent example of the community or population and **D** indicates a poor example of the community or population. The Maine Natural Areas Program tracks all occurrences of rare (S1-S3) plants and natural communities as well as A and B ranked common (S4-S5) natural communities.

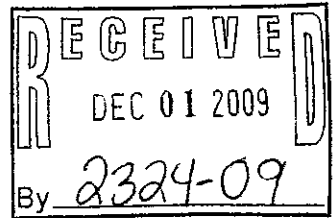
**Note:** Element Occurrence Ranks are determined by the Maine Natural Areas Program.

Visit our website for more information on rare, threatened, and endangered species!  
<http://www.maine.gov/doc/nrimc/mnap>



LAND SURVEYORS

P.O. Box 652 • 130 Oak Street, Suite 1  
Ellsworth, Maine 04605




Richard C. Salsbury, P.L.S.  
Stephen R. Salsbury, P.L.S.  
Raymond S. Silsby, P.L.S.

Tel.: 207-667-7370  
Fax: 207-667-7384  
E-mail: surveyor@herrickandsalsbury.com

November 30, 2009

Maine Historic Preservation Commission  
Attn: Earle Shuttleworth  
65 State House Station  
Augusta, ME 04333

Based on the information submitted, I have concluded that there will be no historic properties affected by the proposed undertaking, as defined by Section 106 of the National Historic Preservation Act. Consequently, pursuant to 36 CFR 800.4(d)(1), no further Section 106 consultation is required unless additional resources are discovered during project implementation pursuant to 36 CFR 800.13.

  
Kirk F. Mohney,  
Deputy State Historic Preservation Officer  
Maine Historic Preservation Commission

12/16/09  
Date

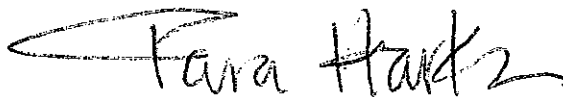
Dear Mr. Shuttleworth:

We are doing some work on a parcel of land in Lamoine, located on the easterly side of the Lamoine Beach Road, approximately 1,500 feet south of the intersection of the Lamoine Beach Road and the Mill Road. Enclosed please find a location map.

We are writing to inquire as to whether there are any historic landmarks/features in the area that we should be aware of?

Thank you for your time.

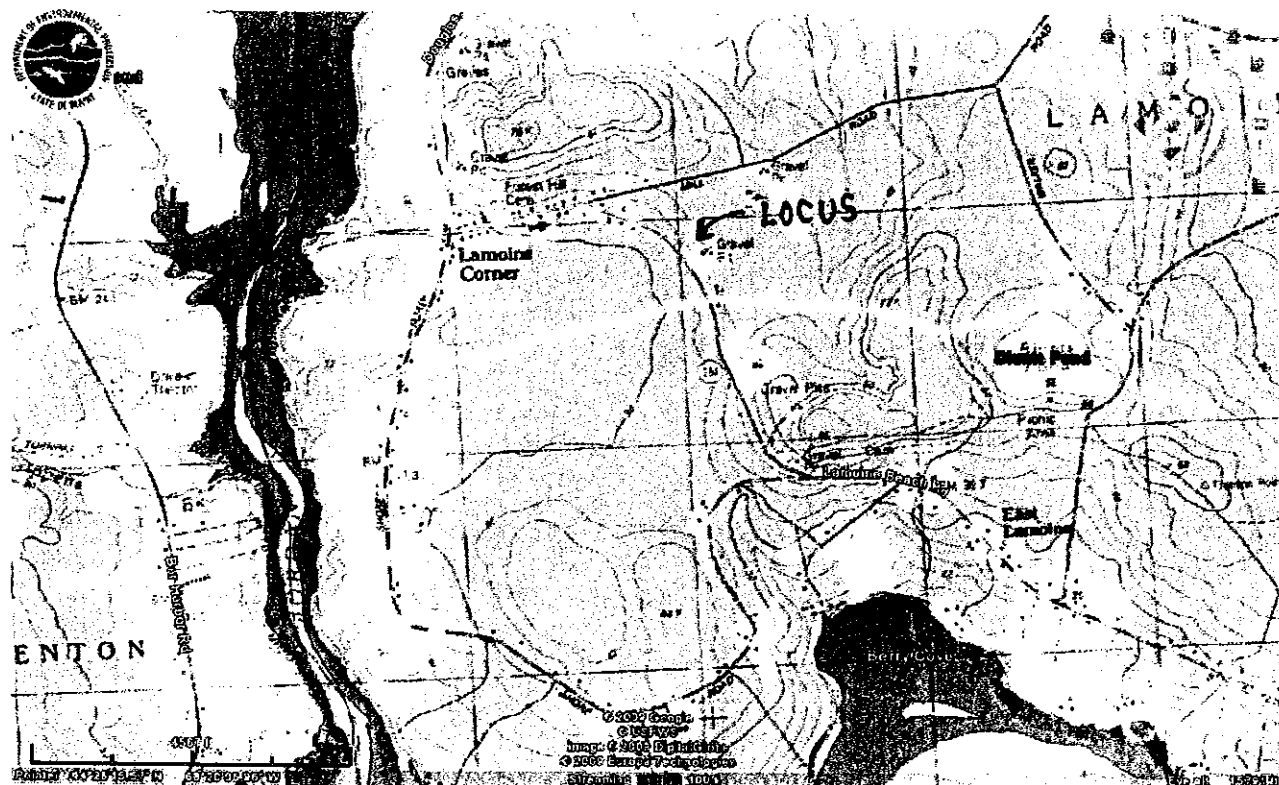
Sincerely,



Tara Hartson

# WATERFOWL HABITAT

## MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION



### LEGEND:

#### Inland Wading Waterfowl Habitat Data

Inland waterfowl and wading bird habitats include 250 feet of upland nesting habitat with no buffer.

#### Inland Wading Waterfowl Habitat Data

#### Tidal Wading Waterfowl Habitat Data

Tidal waterfowl and wading bird habitats include no buffer, though a permit is required for activities within 75 feet of any coastal wetland.

#### Tidal Wading Waterfowl Habitat Data

#### Shorebird Feeding Habitat Data

Shorebird habitats are shown as defined by F.L. 2007 Chapter 290, effective June 14, 2007.

#### Shorebird Feeding Area Habitat Data

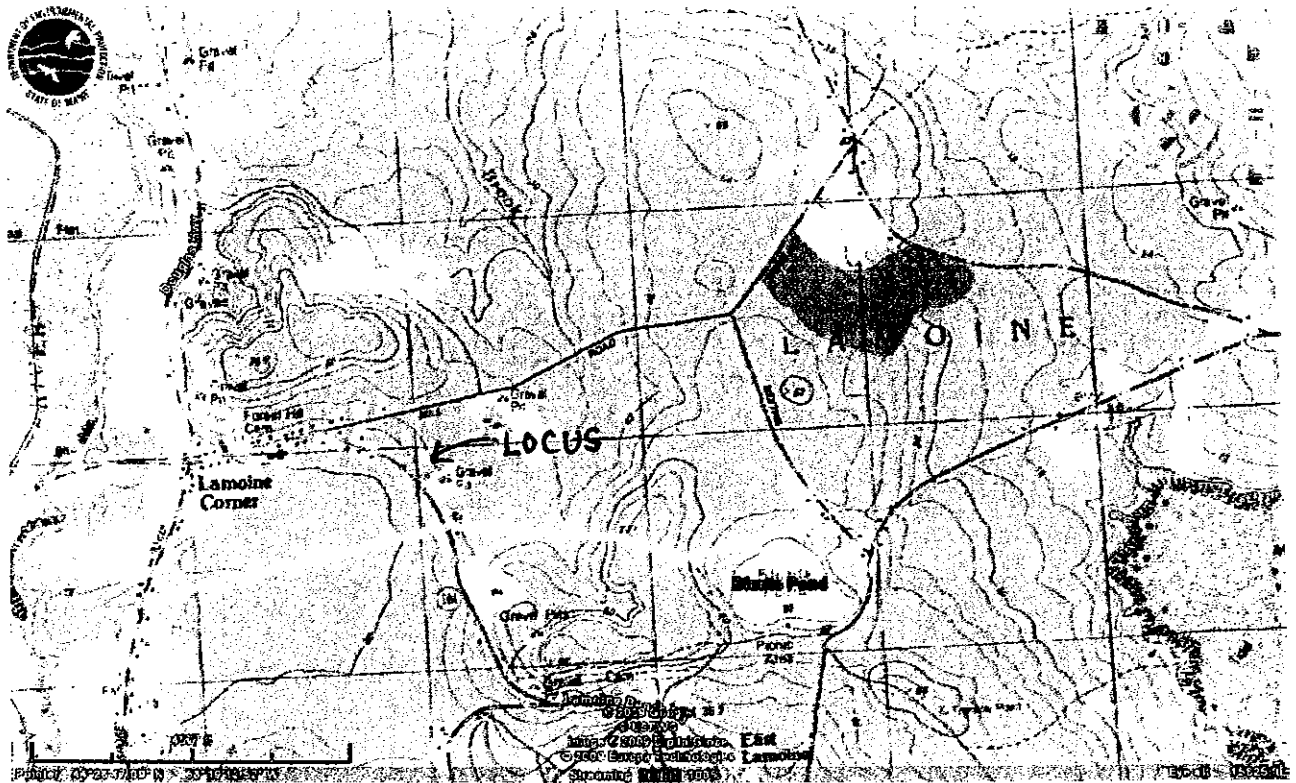
#### Shorebird Feeding Area Habitat Data

Shorebird habitats are shown as defined by F.L. 2007 Chapter 290, effective June 14, 2007.



# DEER WINTERING AREAS

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION



## LEGEND:

 Deer Wintering Areas

TOWN OF LAMOINE

**GRAVEL ORDINANCE: PERMIT APPLICATION**

Map # 3 Lot # 8 Size: 3 acres Fee: \$100  
Date rec'd    /    /   

1. Owner of record and current address:

Name: **Doug Gott & Sons, Inc.**  
Address: **110 Bass Harbor Road, Southwest Harbor, ME 04679**  
Phone: (work) **244-7461**

2. Operator (if not owner)

Name: **same (Stephens Pit)**  
Address:  
Phone: (work)

Please attach a plot plan drawn to scale. It must show:

3. the location and boundaries of the site and the name and location of all abutting property owners.
4. the existing contours of the land within the boundaries and extending beyond the boundaries for 100 feet; the contours must be shown at no more than 10 foot intervals. The scale used to define the contours must be included on the plan.
5. The location of all existing or proposed access roads and of any existing or proposed temporary structures.

Further requirements according to the current Gravel Ordinance:

6. Attach a description of the proposed provisions for drainage and erosion control.
7. What is the estimated longevity of this pit, based on the removal rate over the 12 months immediately past?  
  
(For a new pit, give your best estimate) **Indefinite**
8. Explain how your financial capacity is enough to allow you to restore the pit after it is no longer in operation.

**Reserve money will be set aside to allow future funding of the restoration of the site.**


10. Attach copies of your annual statements to the Code Enforcement Officer stating whether 200 cubic yards or more were removed from the pit during each yearly period from October 1 through September 30. One statement per year is required.
11. At the request of the Planning Board, you may need to provide information that indicates any or all of the following: the hydrology, the physical characteristics of the site, the extent of your proposed operations, and compliance with the performance standards of Section 8 of the Gravel Ordinance.
12. Attach a statement of whether you intend to have a washing operation in the pit. If a washing operation is proposed, include any proposal to use ground water extraction from the site to provide for the washing, with a demonstration that the water extraction will not lower the ground water level at the boundaries of the area by more than two feet or will not lower the ground water level to the detriment of existing ground water use.
13. Attach a plan for monitoring separation of excavation limits from the average seasonally high water table.

### CERTIFICATION

The undersigned applicant (and the owner, if the applicant is not the owner) hereby certifies:

- that the information provided in this application is accurate;
- that the estimates made herein are in good faith after a review of the records of the operation; and
- that the undersigned has read and will comply with the Performance Standards set out in Section 8 of the Lamoine Gravel Ordinance.

8/11/09  
(date)

  
(signature of applicant)

\_\_\_\_\_  
(signature of owner, if not applicant)

---

FOR USE BY PLANNING BOARD ONLY

Date considered \_\_\_\_\_

Approved [ ] \_\_\_\_\_

Date reconsidered \_\_\_\_\_

Incomplete [ ] \_\_\_\_\_

Denied [ ] \_\_\_\_\_

Conditions for approval: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Reason(s) for denial: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TOWN OF LAMOINE  
**LAMOINE PLANNING BOARD**  
 606 Douglas Highway  
 Ellsworth, ME 04605

**NOTICE OF INTENT TO RESTORE A GRAVEL PIT OR MINE**

Date: Nov. 12, 2009

**Owner's Name: Doug Gott & Sons, Inc.**

**Property Location**

Town/City : Lamoine      Street/Road : Lamoine Beach Road

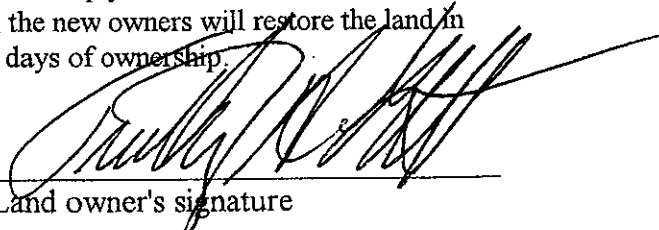
Lot # 8    Map # 3      Book # 5114    Page # 349

The Gravel pit or Mine Restoration Plan specified on the attached plan has been designed to restore the land areas to their pre- existing condition, or a condition which is in compliance with the Maine State Department of Environmental Protection and the Town of Lamoine's Gravel and Mining Ordinance

The design is in accordance with Section 8, Performance Standards, Subsection D, Restoration, Items a., b., c., and d. of the Lamoine Land Use Ordinance and the State of Maine's Chapter 38 MRSA § 490-D Sec. 14A, B, C, and D.

Upon sale or transfer of property, the new owners will comply with the recorded Plan if the Gravel Pit or Mining Operations are continued. Otherwise, the new owners will restore the land in compliance with the Plan recorded within 60 (sixty) days of ownership.

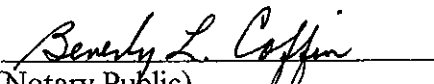
Doug Gott & Sons, Inc., Timothy H. Gott, President  
 Land owner's Name (printed)

  
 Land owner's signature

State of Maine Hancock ss: November 12, 2009  
 (county) Date

Subscribed and sworn to by the above named Timothy H. Gott  
 This 12<sup>th</sup> day of November, 2009 at Ellsworth,  
 Maine.

Before me,

  
 (Notary Public)

BEVERLY L. COFFIN  
 NOTARY PUBLIC, MAINE  
 MY COMMISSION EXPIRES NOVEMBER 11, 2015

## RECIPROCAL WAIVER OF SETBACK

Now comes the undersigned, Douglas Gott & Sons, Inc., 110 Bass Harbor Road, Southwest Harbor, Maine, hereinafter referred to as "Company" and Douglas A. Gott, with a mailing address of 110 Bass Harbor Road, Southwest Harbor, Maine, hereinafter referred to as "Gott", agree as follows:

Whereas Company is the owner of a certain lot or parcel of land situated on the Lamoine Beach Road, Lamoine, Maine, shown on tax map 3, lot 8 (Stephens Pit) and

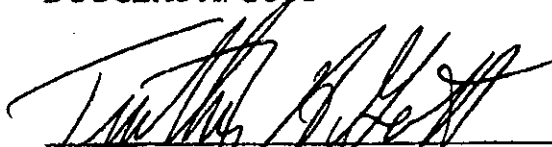
Whereas Gott is the owner of a certain lot or parcel of land situated on the Lamoine Beach Road, Lamoine, Maine, shown on tax map 3, lot 6 (B&H Pit) and

Whereas the parties are desirous of reciprocally waiving those setback and buffer provisions as may be set forth in Section 8(A) of the Lamoine Gravel Ordinance and Section J(6) of the Lamoine Site Plan Review Ordinance, now therefore, in consideration of one dollar and other valuable consideration, mutual receipt of sufficiency whereof is acknowledged, the parties agree as follows:

By execution of the within waiver, Company and Gott hereby agree to waive the maintenance of that buffer strip and or setback as may otherwise be required pursuant to Section 8(A) of the Lamoine Gravel Ordinance and Section J(6) of the Lamoine Site Plan Review Ordinance by and between those properties of Company and Gott referred to hereinabove, and to provide the Lamoine Planning Board, a copy of the same so as to confirm the reciprocal waiver thereof.

Signed this 12 day of January, 2010.

  
DOUGLAS A. GOTT

  
TIMOTHY H. GOTT, President  
Doug Gott & Sons, Inc.

## **Operations Statement**

### **Work Hours**

Doug Gott & Sons Inc. will operate the gravel operation Monday through Saturday during the hours of 6 AM until 6 PM or sunset, whichever is later. There will be no Sunday work.

### **Crushing & Washing**

No washing operations will take place. Portable screeners will be utilized from time to time in all working areas.

### **Gating**

The access roads will be gated during non-working hours and on Sunday.

### **Noise**

Equipment used in the gravel extraction operation will be :

Dump truck or tractor/dump trailer

Loader

Bulldozer

Excavator

Screener

Hydroseeder

Noise levels will not be exceeded as outlined in Section 8 subsection H of the Gravel Ordinance of the Town Of Lamoine.

## **Groundwater Protection**

The Stephens Pit will maintain a minimum of 5' of separation in all areas. The Stephens Pit will not be excavated more than 30 feet below the existing ground elevation. The Stephens Pit will primarily be used for storing sand, loam and gravel after the site is cleared and contoured as shown on the site plan.

NOTE : The Stephens Pit is located entirely over the mapped gravel aquifer.

Test wells are installed in the pit or immediately adjacent to. The wells are monitored annually in the spring with the code enforcement officer present. A new monitoring well will be established in the Stephens Pit as shown on the site plan once the site is prepared.

## **Drainage**

The Stephens Pit is internally drained. No stormwater within the working pit will flow outside the pit area. There are no unvegetated steep slopes that currently exist, with the exception of the working areas.

## **Reclamation Plan**

Restoration will depend on extraction rates. The side slopes will be graded to a 2.5:1 slope and seeded as outlined in the attached specifications.

For two years from the date of restoration, Doug Gott & Sons Inc. will guarantee that at least 85 percent of the vegetation will thrive. If at the end of the two years less than 85 percent of the area is not growing vegetation, the areas that have failed will be replanted.

## **Statement of Restoration**

Doug Gott & Sons Inc. will restore the worked areas as outlined within the application. A notice of intent to restore will be recorded in the Hancock County Registry of Deeds.

## **Trip Estimates**

Trips in and out of the pit area are generally about 5 trucks per hour. Estimation of trips is difficult due to the fact it is not possible to predict the type of projects Gott will undertake in the future. Some days when large amounts of material are needed and the site is within a short distance from the pit, there could be 5-10 trucks per hour. Some days, when not much material is needed or the job sites are far from Lamoine, trucks will come and go on a limited basis.

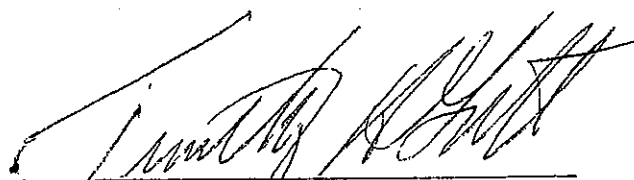
## **Enforcement / Inspections**

The Code Enforcement Officer has permission to inspect the operations at any time without advanced notice. A signed certificate is attached as part of this application.



This letter will serve as permission for the Town Of Lamoine code enforcement officer to inspect the pit operations of Doug Gott & Sons Inc. at any time and without notice. Only duly appointed planning board members or members of the select board may accompany the code enforcement officer for purposes of inspection.

Doug Gott & Sons Inc.

A handwritten signature in black ink, appearing to read "Timothy H. Gott", written over a horizontal line.

Timothy H. Gott, President

8/24/01

Date



December 4, 2003

HERRICK & SALSURY  
ATTN: STEVE SALSURY  
PO BOX 652  
ELLSWORTH, ME 04605

Subject: RECLIMATION OF DOUG GOTT & SONS GRAVEL PITS  
HYDROSEEDING

### SEED

Mix ME DOT roadside seed mix for loamed and unloamed slopes applied at 3lbs. per 1000sf.

#### Mix Composition

Creeping Red Fescue	50%
Sheeps Fescue	25%
Red Top	5%
White Clover	10%
Annual Rye	10%

### FERTILIZER

18.5-18.5-18.5 50% slow release fertilizer applied at 17lbs. per 1000sf.

### LIME

Hydro-sweet liquid lime supplement applied at ½ gallon per 1000sf.

### MULCH

Ecofibre 100% wood fiber hydro-mulch applied at 38lbs. per 1000sf.

### PLANTING

Plant mixed pine seedlings, 15-18" ht., planted 1-2 per 1000sf.



04-1286 G

November 09, 2009

Herrick & Salsbury, Inc.  
Attention: Steve Salsbury  
P.O. Box 652  
Ellsworth, ME 04605

Subject: Hydrogeological Services  
Doug Gott & Sons, Inc. Gravel Pits  
Water Level Monitoring  
Lamoine, Maine

Dear Steve:

In accordance with our Agreement dated November 30, 2004, on April 28, 2009, we measured the water level at seven locations at the Doug Gott & Sons, Inc. gravel pit in Lamoine, Maine. Locations of the seven wells measured are shown on Sheet 1.

The water level measurements were obtained using a Water Level Indicator, Model 51453 manufactured by Slope Indicator Company of Seattle, Washington. See Table 1 for water level measurement results.

**Table 1**  
**Gravel Pit Water Level Measurements**

Well Name	Water Level Below Ground Surface <sup>1</sup> (ft)	Height of Pipe Above Ground Surface (ft)	Depth of Pipe Below Ground Surface (ft)
PW-1	5.82	3.20	12.62
PW-2	6.25	1.60	7.90
PW-3	2.81	0.70	4.50
PW-4	3.10	1.60	5.28
SH-1	55.63	2.65	70.17
OW-1	32.21	2.25	45.15
MW-1	7.29	1.60	15.00

Notes:

<sup>1</sup> Water levels reflect site conditions at the time of measurement. Actual conditions will vary.

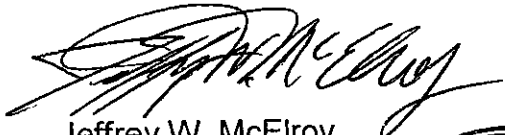
Current and previous water level data we collected at the site are presented on Sheet 2, and a graph of the water level data is presented on Sheet 3.

In accordance with our Agreement, we will continue to conduct water level measurements at the same locations in the spring and fall of each year until otherwise directed by you.

We appreciate the opportunity to work with you on this project. If you have any questions or need additional assistance, please do not hesitate to call us.

Very truly yours,

**S. W. COLE ENGINEERING, INC.**

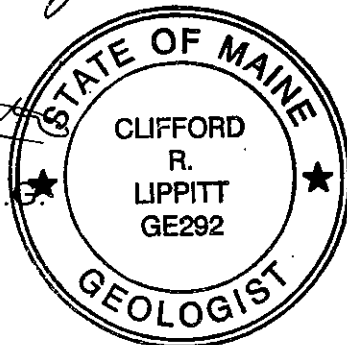


Jeffrey W. McElroy  
Geologist



Clifford R. Lippitt C. G.  
Senior Geologist

JWM-CRL:jwm/slh



P:\2004\04-1286 G - Herrick & Salisbury - Lamoine, ME - Gott Gravel Pit Water Levels 04-06 - JWM\2009\11-02-09.doc

**Doug Gott & Sons, Inc. Lamoine Gravel Pit**

		WATER LEVEL WELLS						
		WATER LEVEL BELOW GROUND SURFACE						
		PW-1	PW-2	PW-3	PW-4	SH-1	OW-1	MW-1
Standpipe Height		3.20	1.60	0.70	1.60	2.65	2.25	1.60
Sampling Dates	12/09/04	12.31	Dry @ 7.9'	Dry @ 4.5'	Dry @ 5.28'	58.81	36.07	13.33
	06/07/05	6.64	7.00	2.46	3.60	55.57	32.90	8.70
	11/02/05	5.19	8.01	3.05	3.40	55.65	32.63	8.67
	04/20/06	6.50	7.19	3.12	3.58	56.22	32.79	9.25
	11/15/06	6.85	7.30	4.66	3.09	56.67	33.00	9.21
	05/17/07	5.77	6.24	2.81	2.98	55.79	32.36	8.58
	11/19/07	8.49	Dry @ 7.9'	Dry @ 4.5'	Dry @ 5.28'	57.16	33.56	10.38
	04/16/08	5.89	6.21	2.60	3.17	55.27	32.43	8.40
	10/30/08	8.20	Dry @ 7.9'	4.05	4.80	56.42	32.81	9.63
	04/28/09	5.91	6.20	2.69	3.19	55.19	23.05	7.70
	11/02/09	5.82	6.25	2.81	3.10	55.63	32.21	7.29

Notes:



1. All measurements are in feet.
2. PW-3 riser height reduced to 2.50' by damage prior to the 12/03/04 measurement, and to 0.70' prior to the 6/07/05 measurement.

**Spill Prevention Control and Containment Plan**  
**Doug Gott and Sons, Inc.**

Witnesseth:

In an effort to insure that the development will be operated in a manner which will have a minimal adverse impact on the natural environment within the development and the surrounding areas and to aid in the protection, health, safety and general welfare of the community.

NOW THEREFORE, Doug Gott and Sons, Inc., a Maine corporation with a principal place of business in the town of Southwest Harbor, County of Hancock, State of Maine, hereby dispose and adopt the following Spill Prevention Control and Containment Plan for the operation of all their burrow pits located in the town of Lamoine, County of Hancock, State of Maine.

1. Anticipated Hazardous Materials: It is anticipated that the only hazardous materials to which the premises would be subject to are the petroleum products normally contained within the vehicles, loaders and/or excavators to be used on the premises.

2. Preventive Maintenance and Procedures: All operators, drivers and other personnel who operate equipment on the premises will be instructed to do a physical inspection of all tanks, hoses and reservoirs which contain petroleum products on or about their vehicles daily. If such an inspection reveals leakage of any fuel, hydraulic fluid or other petroleum products from the vehicle, the vehicle will not be allowed into the area until the same has been repaired, reasonable wear and tear expected.

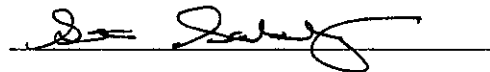
No petroleum products, fuel or other hazardous materials will ever be stored on the premises.

No vehicles other than a loader will be stored on the premises overnight.

3. Containment of Spill: In the event that a spill of any hazardous material of whatever nature occurs, in the case of minor leakage, such as broken hydraulic hoses, break hoses and radiator or coolant hoses, gas lines, etc., the spill will be cleaned up with absorbent pads. All contaminated material shall be removed from the premises before the end of the current business day.

For any major spills, that are spills for which the Department of Environmental Protection notification is required, the contaminated soil will be immediately excavated by use of excavator, backhoe or whatever other equipment is available to the depth of contamination and the contaminated soil will be immediately removed from the premises. The Department of Environmental Protection and the Town Of Lamoine Code Enforcement Officer will be notified immediately and any further action or reclamation will be conducted in accordance with their recommendations.

By: Stephen Salsbury, Agent  
Doug Gott and Sons, Inc.

A handwritten signature in black ink, appearing to read "Stephen Salsbury", is written over a horizontal line.

Dated : 01/11/09

**HYDROGEOLOGICAL SERVICES REPORT  
PROPOSED BILLINGS GRAVEL PIT EXPANSION  
ROUTE 184  
LAMOINE, MAINE**

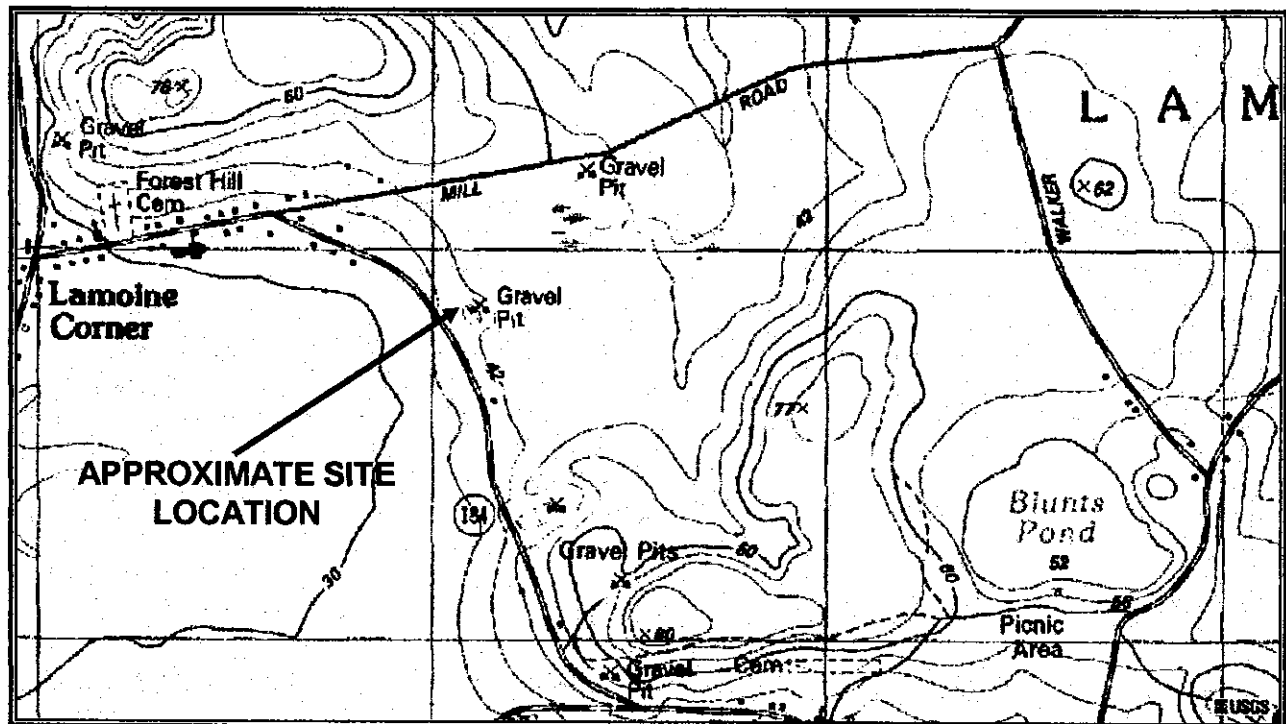
**03-0044.6 G      JANUARY 15, 2010**

**PREPARED BY**



**FOR**

**DOUG GOTT & SONS c/o HERRICK & SALSBUURY, INC.**



**NOTE:** Base Map from teraserver.com, map not to scale. Topographic contour interval 6 meters.



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5.0 FINDINGS AND CONCLUSIONS .....	4
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Sheet 1	Site Plan
Sheet 2	Bedrock Geology Map
Sheet 3	Surficial Geology Map
Sheet 4	Aquifer Map
Sheet 5	Groundwater Elevations Table

APPENDIX A	Limitations
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03-0044.6 G

January 15, 2010

Doug Gott & Sons  
c/o Herrick & Salsbury, Inc.  
Attention: Steve Salsbury  
P.O. Box 652  
Ellsworth, ME 04605

Subject: Hydrogeological Services Report  
Proposed Billings Gravel Pit Expansion  
Route 184  
Lamoine, Maine

## **1.0 INTRODUCTION**

In accordance with our Agreement of November 24, 2009, we have made a hydrogeological evaluation for the area near the proposed Billings Gravel Pit expansion in Lamoine, Maine. The current property proposed for expansion is formerly known as the Stephens lot, and abuts the current Billings Gravel Pit. A map showing the approximate site location is presented on the front cover of this report.

### **1.1 Purpose**

It is our understanding that the purpose of our services was to provide a hydrogeological evaluation of the proposed gravel pit expansion area. We understand that this evaluation was requested by the Lamoine Planning Board primarily to evaluate the potential for the gravel pit expansion to impact the water resources of the Cold Spring Water Company, north of Mill Road. In addition, we understand that the hydrogeological evaluation should address whether there is potential for the gravel pit to have an adverse impact on the residential wells on lots adjacent to the proposed gravel pit expansion.

### **1.2 Limitations**

This report is subject to the Limitations outlined in Appendix A.

## **2.0 SITE SETTING AND PUBLISHED INFORMATION**

### **2.1 Topographic Setting**

USGS topographic mapping (presented in meters on the cover of this report), shows the elevation of the site to range between 118 feet (36 meters) toward the west and 137 feet (42 meters) toward the east. More site specific topographic contours are presented on our Site Plan, presented as Sheet 1. The topographic contours derived from actual elevation data collected at or adjacent to the site indicate that the range of topographic relief at the site is from approximately 110 feet in the west to approximately 155 feet in the east. The general ground slope at the site is from the northeast toward the southwest.

As shown on Sheet 1, surficial drainage from the site is generally to the southwest.

### **2.2 Existing Site Conditions**

The site is located east of, and adjacent to, Route 184 in Lamoine, Maine. The site is currently vacant, mostly wooded land. The area north and west of the property consists of residential land uses. The land east and south of the site consists of current and former gravel pits.

### **2.3 Published Geologic Information**

We reviewed published Maine Geological Survey (MGS) bedrock and surficial geological mapping, sand and gravel aquifer maps and published soils mapping depicting the physical aspects of the site and surrounding areas. These are described below.

#### **2.3.1 Published Bedrock Mapping**

According to published bedrock mapping (Reusch, 2003), bedrock at the site consists of Ellsworth Schist (a quartz-feldspar-muscovite-chlorite schist). A copy of the bedrock geologic map for the area is presented as Sheet 2.

### **2.3.2 Published Surficial Mapping**

According to published surficial geologic mapping (Borns, 1974), the site is mapped as glacial stream deposits consisting of sand and gravel that may include minor till deposits. A copy of the MGS surficial geologic mapping for the area is presented as Sheet 3.

### **2.3.3 Published Aquifer Mapping**

Published significant sand and gravel aquifers mapping (Lock & Neil, 2007) shows the site located over a significant sand and gravel aquifer. The mapping also indicates that the depth to bedrock near the site area is approximately 65 feet, and the bedrock water table is approximately 17 feet below the ground surface at the mapped location. MGS also maps a surface water drainage-basin boundary (generally comparable to groundwater divide) topographically upgradient of the site. The Cold Water Spring Company spring is shown to be approximately 1,000 feet northeast and on the opposite side of the surficial groundwater divide from the site. A copy of the published aquifer mapping for the area is presented as Sheet 4.

## **2.4 Regional Geomorphology.**

The Salisbury Cove United States Geological Survey 7.5 minute topographic map (a portion of which is shown on the cover of this report) shows the majority of the site to be located on a southwest facing slope (i.e. surficial drainage is to the southwest). East of the site property, the topographic contours indicate that there is a surficial drainage divide (the apex of topography being approximately 160 feet, east of which surface water flows to the east-northeast, with surface water flowing to the west-south west on the west side of the apex). It appears that the surficial drainage east of this divide/ridge flows to a wetland area that marks the head of Archers Brook, which initially flows east then turns to the north. The flanks of a large hill are directly north of the site (across Mill Road). The Cold Water Spring Company spring is shown to be on the northwest side of an elevated spur of one of the flanks.

## **3.0 GROUNDWATER MOVEMENT**

We collected groundwater level data from a surficial groundwater observation well located in the Billings Gravel Pit (PW-4) and bedrock groundwater levels from private

residential wells adjacent to the site. The purpose of collecting the groundwater level data was to develop a general understanding of the horizontal groundwater flow conditions in the area around the site. Although bedrock and surficial wells are not always directly comparable, a relative correlation of the groundwater conditions may be inferred from assessing them.

### **3.1 Groundwater Measurements**

Depth to groundwater measurements were used to calculate groundwater elevation at the observation locations. On January 11, 2010, we measured the depth to groundwater in the overburden observation well PW-4 (in the Billings Gravel Pit), four adjacent residential bedrock wells, two north (Moore and Damon) and two west (Swanberg and Curtis). For this evaluation, we also used data previously reported for surficial groundwater level piezometers (PZ-2003-1, PZ-2003-2, and PZ-2003-3) east of the site. We used the depth to groundwater at these locations to extrapolate the groundwater elevations from ground elevation survey information provided by Herrick & Salsbury, Inc. The groundwater depth and elevation data are tabulated on Sheet 5.

### **4.0 STATE AND LOCAL REGULATIONS**

The State of Maine Borrow Resource regulations (State of Maine, 1995) indicate that the maximum, required separation distance between the active borrow resource and a public water supply is 1,000<sup>1</sup> feet, 100 feet for a private bedrock well, and 200 feet for a point driven or dug well. The Town of Lamoine does not appear to have an ordinance addressing water resource separation distances for gravel pits that exceed the state minimum of 100 feet (Lamoine, Town of, 2009).

### **5.0 FINDINGS AND CONCLUSIONS**

Based on water level measurements, geological features, previous investigations<sup>2</sup> and the distance between the proposed gravel pit expansion and the spring house, it is our

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<sup>1</sup> Systems serving 500 persons or less = 300 foot separation distance, 501 to 1,000 persons = 500 feet, >1,000 persons = 1,000 feet.

<sup>2</sup> Hydrogeological Services, Proposed Woodwaste Storage Area, Lamoine, Maine report dated June 19, 2003, a hydrogeological investigation to evaluate the possibility of a connection between the groundwater moving beneath the proposed woodwaste storage area and a spring owned by the Cold Spring Water Company.

interpretation that the gravel pit expansion will not impact the public water supply. A discussion of our interpretation is included below.

Water levels measured west of the published surface water drainage-basin divide are substantially lower in elevation than those to the east. The elevation of groundwater/surface water at the spring (137.6 feet) is more than 35 feet higher than observed in the Billings Pit (99.3 feet). We understand that the proposed pit expansion will have a bottom of excavation depth of 110 feet (i.e. 5 feet above the lowest point in the Billings Pit). If one were to ignore the groundwater divide, geological features (till layers), or previous investigations showing groundwater flow to the north; based on the overburden groundwater elevations alone, flow would be from the spring toward the proposed pit. Therefore, the pit would not result in significant adverse impact to the water quality of the spring. As the existing pit does not currently contain water and is, and will continue to be, internally drained, the proposed expansion will not change the current water level, so it will not impact the water level at the spring.

Glacial till was observed in the field at the ground surface near the eastern edge of the Billings Gravel Pit. Glacial till (silty clay) was also encountered at depth while drilling PZ-2003-2 and PZ-2003-3 (further to the east). These observations are interpreted to indicate the presence of a low permeability glacial till layer separating the sand and gravel aquifer for the Spring House and the sand and gravel observed in the Billings Pit. This is supported by the variation of more than 35 feet between the water levels at the Spring House and the piezometers and the groundwater elevation at PW-4 (Sheet 5). This also indicates that the expansion of the Billings Pit should not result in significant adverse impact to the spring (volume or water quality).

The groundwater divide mapped by the MGS (Locke, 2007) is an interpreted location based primarily on surface topography. This divide, located between the Spring House and the Billings Pit and its proposed expansion, is interpreted to indicate flow to the east-northeast on the east side of the divide and to the west-southwest on the west side of the divide. This is illustrated on Sheet 1. These surficial groundwater flow directions also indicate that the proposed pit expansion will not result in significant adverse impact on the spring (volume or water quality).

The distance separating the pit expansion from the spring is greater than 1000 feet. This meets the most stringent MDEP separation requirement of borrow pit operations from a public water supply. This is interpreted to be a sufficient protective distance to preclude adverse impacts on a public water supply (water quality).

The surficial groundwater elevation at the Billings Gravel Pit is approximately 5 feet higher than water levels measured at the adjacent bedrock residential wells. As the existing gravel pit and its proposed expansion is internally drained, there will be no impact on groundwater recharge, therefore, the volume of water recharging the bedrock aquifer will remain unchanged. The four residential wells evaluated (Sheet 1) were noted to have overburden casings extending 80 to 81 feet below the ground surface. These casing lengths (approximately 15 feet into bedrock, Sheet 4) with setbacks from the property line in excess of 100 feet (an addition 50 feet of separation will be provided by the permit borrow pit permit requirement to stay 50 feet from the property boundary), exceed the MDEP protective setback requirements from a quarry or gravel pit for a residential bedrock well. It is assumed that Doug Gott & Sons will exercise the same practices in the proposed gravel pit expansion, as have been required by State regulations and Town ordinances in the adjacent and active borrow pits. Therefore, the residential wells downslope of the proposed gravel pit expansion should be of no greater risk to degraded well water quality than present with the existing Billings Gravel Pit.

**6.0 CLOSURE**

Thank you for utilizing our services with this phase of your project. If you have any questions, or if we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

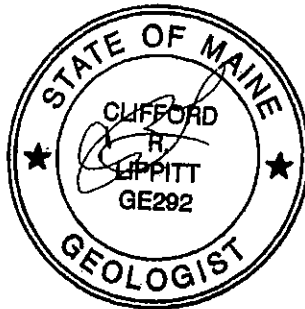
**S. W. COLE ENGINEERING, INC.**



Jeff W. McElroy  
Geologist



Clifford R. Lippitt, C.G.  
Senior Geologist



CRL-JWM:jwm/slh

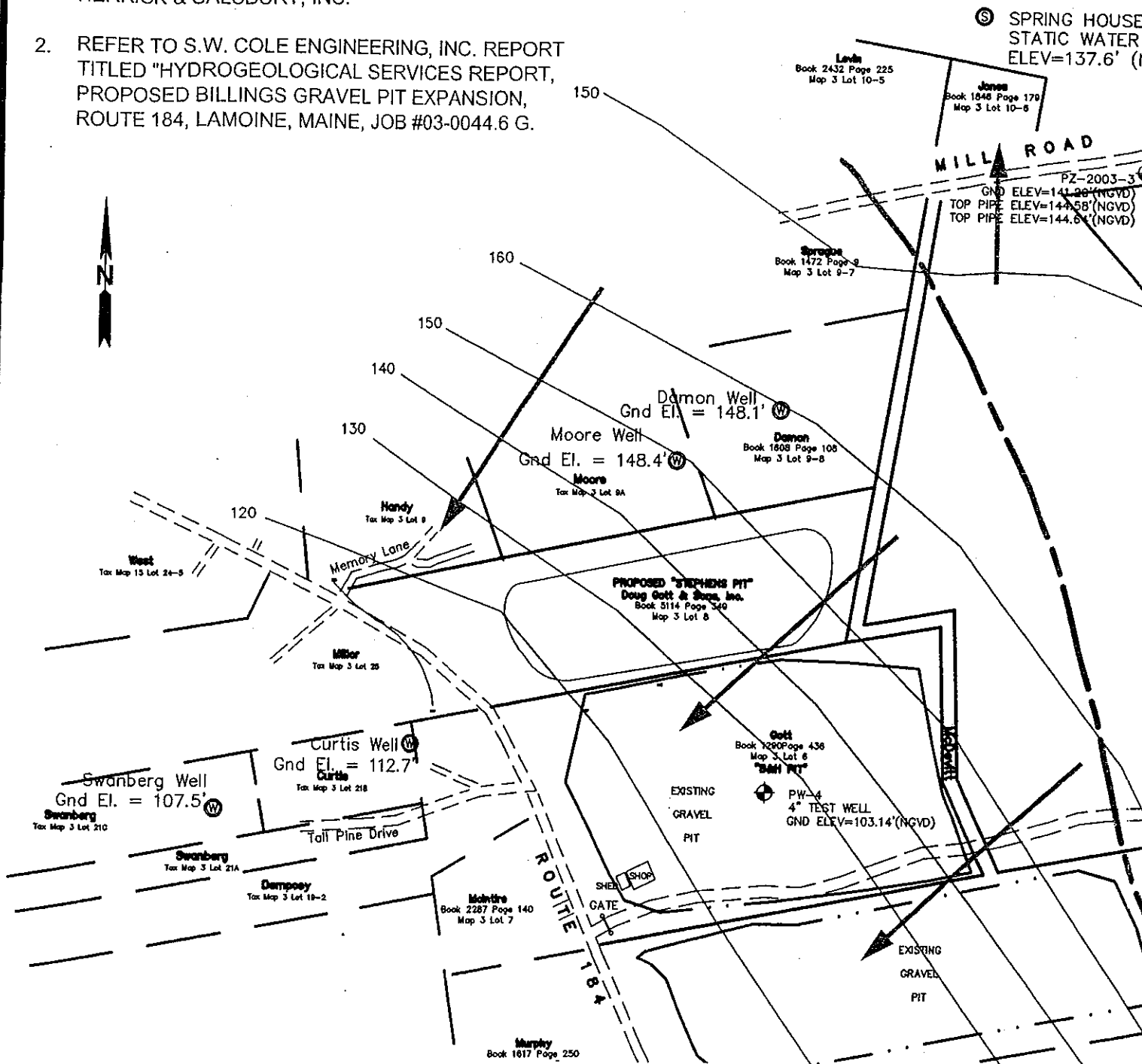


## BIBLIOGRAPHY

- Borns, Harold W. 1974. *Reconnaissance Surficial Geologic of the Mount Desert Quadrangle, Maine*: Open File No. 74-7. Maine Geological Survey. Department of Conservation, Augusta, Maine.
- Lamoine, Town of. Gravel Ordinance. Section 8 Performance Standards, C Groundwater Protection. April 8, 2009. ([http://www.lamoine-me.gov/Town%20Hall/Ordinances/GravelOrd.htm#\\_Toc9151248](http://www.lamoine-me.gov/Town%20Hall/Ordinances/GravelOrd.htm#_Toc9151248)).
- Locke, Daniel B. and Craig D. Neil. 2007. *Significant Sand and Gravel Aquifers Salsbury Cove Quadrangle, Maine*. Open File No. 07-4. Maine Geological Survey. Department of Conservation, Augusta, Maine.
- Maine, State of. Maine Department of Environmental Protection. Title 38, Chapter 3, Protection and Improvement of Waters, Subchapter 1, Environmental Protection Board, Article 7 *Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt*. 1995. (<http://www.mainelegislature.org/legis/statutes/38/title38sec490-A.html>).
- Reusch, Douglas N. 2003. *Bedrock Geology, Salsbury Cove Quadrangle, Maine*. Open File No. 03-91. Maine Geological Survey. Department of Conservation, Augusta, Maine.

# NOTES :

1. BASE MAP WITH TOPOGRAPHY PROVIDED BY HERRICK & SALSBUURY, INC.
2. REFER TO S.W. COLE ENGINEERING, INC. REPORT TITLED "HYDROGEOLOGICAL SERVICES REPORT, PROPOSED BILLINGS GRAVEL PIT EXPANSION, ROUTE 184, LAMOINE, MAINE, JOB #03-0044.6 G.



## LEGEND



APPROXIMATE RESIDENTIAL BEDROCK WELL LOCATION



APPROXIMATE COLD SPRING WATER COMPANY SPRING LOCATION



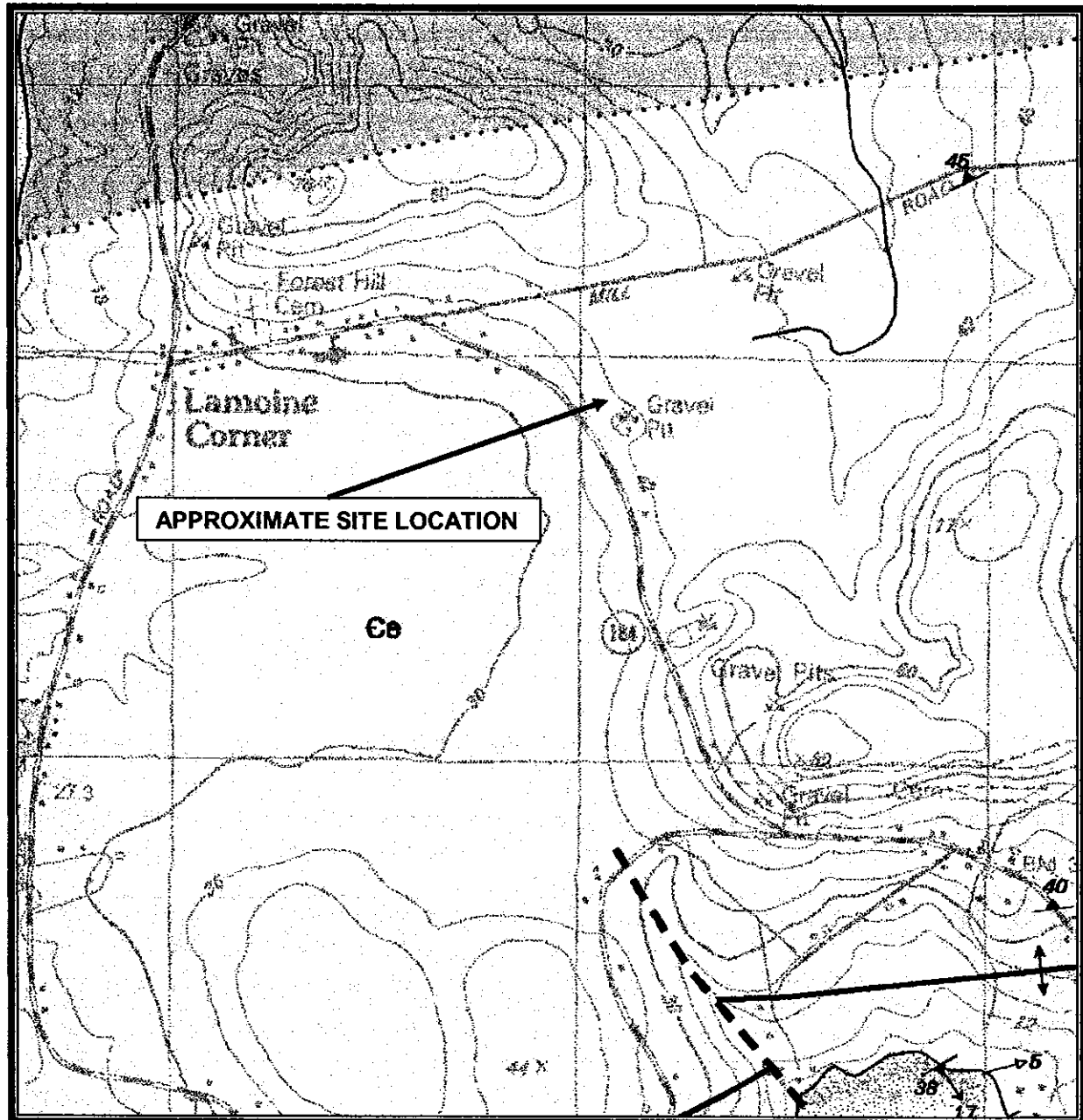
APPROXIMATE SURFICIAL WATER LEVEL WELL LOCATION

APPROXIMATE SURFICIAL GROUNDWATER DIVIDE AS INTERPRETED FROM MGS SIGNIFICANT SAND AND GRAVEL AQUIFERS MAP SURFACE WATER DRAINAGE BOUNDARY (LOCKE, 2007)



INTERPRETED SURFICIAL GROUNDWATER FLOW DIRECTIONS BASED ON GROUNDWATER DIVIDE AND TOPOGRAPHY

## BEDROCK GEOLOGY MAP

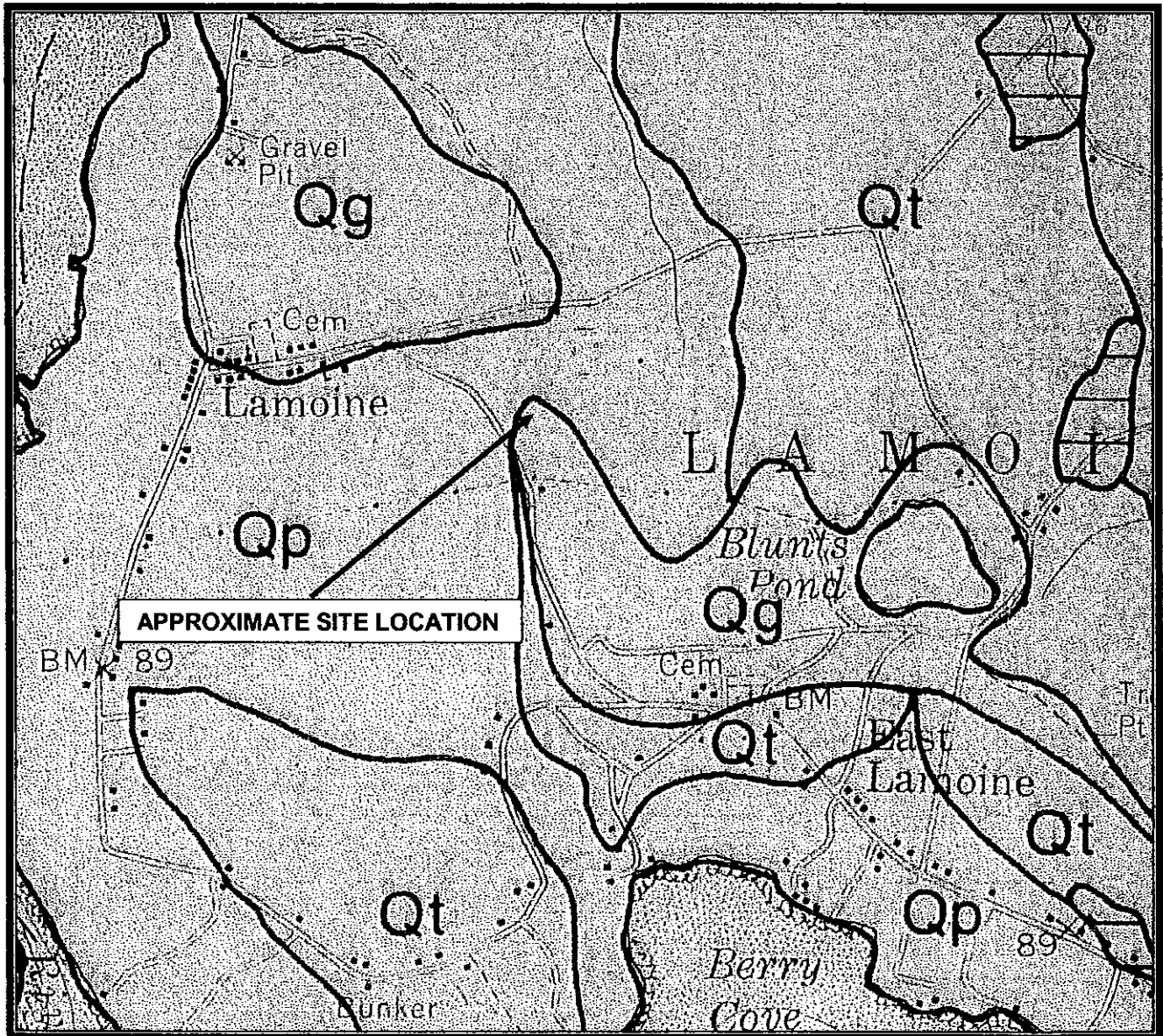


Notes: Base map from Reusch, 1974.  
Map not to scale

### LEGEND:

Ce = Ellsworth Schist

## SURFICIAL GEOLOGY MAP

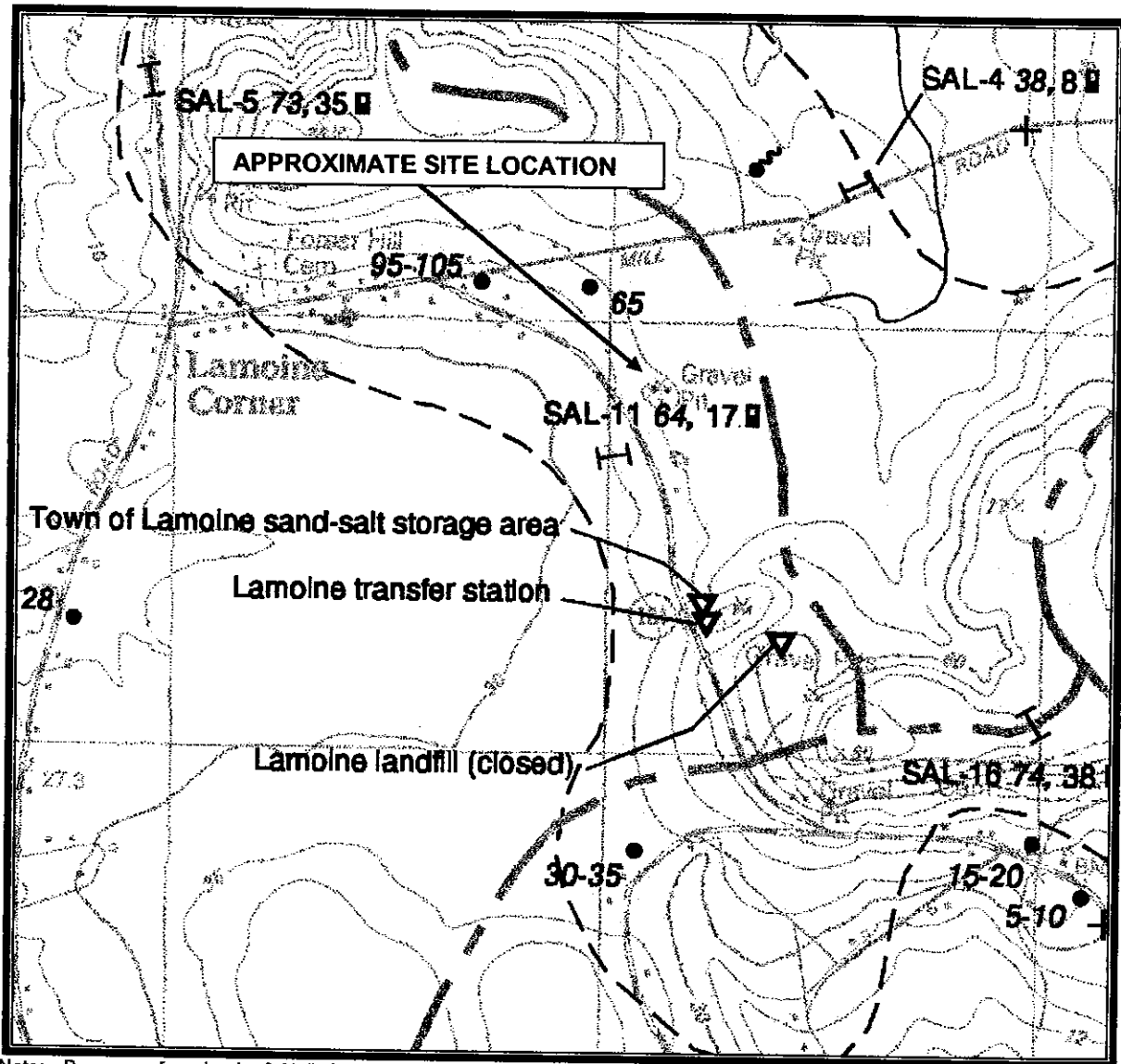


Note: Base map from Borne, 1974.  
Map not to scale

### LEGEND:

- Qg = Glacial-stream deposits
- Qt = Till
- Qp = Glacial-marine deposits

## SIGNIFICANT SAND AND GRAVEL AQUIFERS MAP



Note: Base map from Locke & Neil, 2007.  
Map not to scale

### LEGEND:

- = Surface water drainage boundary
- = Spring with general direction of flow
- = Potential source of groundwater contamination
- = Surficial deposit with yields generally greater than 10 gallons per minute.
- = Drilled Bedrock Well with 4 feet to bedrock
- = Depth to Water Level
- = Twelve channel seismic line, with depth to bedrock and depth to water shown at the midpoint of the line in feet below land surface.

Project Name: Proposed Billings Gravel Pit Expansion  
Project Location: Route 184, Lamoine, ME

Client: Herrick & Salisbury  
SWCE Job No.: 03-0044.6 G

## WELL DETAILS (ft)

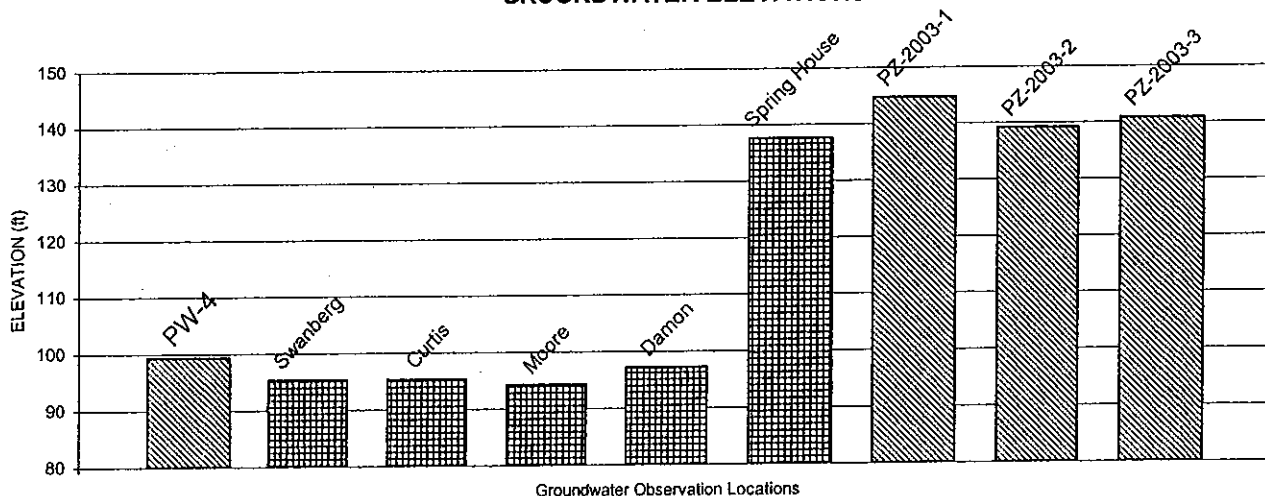
	PW-4	Swanberg	Curtis	Moore	Damon	Spring House <sup>5</sup>	PZ-2003-1 <sup>6</sup>	PZ-2003-2 <sup>6</sup>	PZ-2003-3 <sup>6</sup>
Top of Casing (TOC) Elevation <sup>1</sup>	104.34	109.25	113.90	149.50	149.80	No Casing	145.97	143.10	144.40
Ground Elevation <sup>2</sup>	103.14	107.50	112.70	148.40	148.10	137.60	143.67	140.30	141.29
Approximate Bedrock Elevation <sup>3</sup>	NA <sup>4</sup>	41.50	47.70	83.40	83.10	NA <sup>4</sup>	NA <sup>4</sup>	NA <sup>4</sup>	NA <sup>4</sup>
Length of Casing	5.28	81.00	80.00	80.00	80.00	No Casing	13.30	6.50	10.60
Well Depths	5.28	320.0	300.0	175.0	245.0	No Well	14.30	7.50	11.60

## GROUNDWATER LEVELS & ELEVATIONS (ft)

January 11, 2010


	PW-4	Swanberg	Curtis	Moore	Damon	Spring House	PZ-2003-1	PZ-2003-2	PZ-2003-3
Water Level TOC	5.03	13.87	18.61	55.24	52.60	0.00	1.24	3.95	3.60
Groundwater Elevation	99.31	95.38	95.29	94.26	97.20	137.60	144.73	139.15	140.80

## GROUNDWATER ELEVATIONS



### Legend:

 = Surficial groundwater level well

 = Bedrock groundwater residential well or spring

### Notes:

<sup>1</sup> Top of PVC well for surficial observation wells. Top of steel casing for residential bedrock wells.

<sup>2</sup> Ground elevation data provided by Herrick & Salisbury, Inc.

<sup>3</sup> Assumes casing is set 15 feet into bedrock surface

<sup>4</sup> Not Applicable, well does not extend to bedrock, or depth to bedrock was not provided.

<sup>5</sup> Cold Water Spring Company Spring House. Assumes groundwater is at the ground surface.

<sup>6</sup> "PZ" surficial groundwater observation wells. Groundwater elevation data taken from previously submitted report titled "Hydrogeological Services, Proposed Woodwaste Storage Area, Lamoine, Maine, Job # 03-0044.1 G." Dated June 19, 2003.

## APPENDIX A

## **APPENDIX A**

### **Limitations**

This report has been prepared for the exclusive use of Doug Gott & Sons for specific application to the proposed Billings Gravel Pit Expansion in Lamoine, Maine. S. W. COLE ENGINEERING, INC. has endeavored to conduct the work in accordance with generally accepted geologic practices. No warranty, expressed or implied, is made.

The soil profiles described in the report are intended to convey general trends in subsurface conditions. The boundaries between strata are approximate and are based upon interpretation of data provided by others.

Observations have been made to assess site groundwater levels. Fluctuations in water levels will occur due to variations in rainfall, temperature, and other factors.

Recommendations contained in this report are based substantially upon information provided by others regarding the proposed project. In the event that any changes are made in the design, nature, or location of the proposed project, S. W. COLE ENGINEERING, INC. should review such changes as they relate to analyses associated with this report. Recommendations contained in this report shall not be considered valid unless the changes are reviewed by S. W. COLE ENGINEERING, INC.



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0 1 2 3

MILES

0 1 2 3 4 5

KILOMETERS

*Town of Lamoine, Maine*  
606 Douglas Hwy.  
Lamoine, ME 04605  
207-667-2242  
e-mail [town@lamoine-me.gov](mailto:town@lamoine-me.gov),  
website [www.lamoine-me.gov](http://www.lamoine-me.gov)



Invoice for costs – Site Plan Review Ordinance

Mr. Steve Salsbury  
Herrick & Salsbury  
PO Box 652  
Ellsworth, ME 04605

Re: Doug Gott & Sons, Inc, Site plan review, Map 3 Lot 8

Hearing Date: March 2, 2010

Item	Cost
Certified Mail (23 Notices*)	\$127.42
Legal Ad – Ellsworth American	\$70.12
<b>Total</b>	<b>\$197.54</b>

\*One notice hand delivered when recipient came to town office while preparing the certified mail.

Please remit payment prior to the public hearing date.

A handwritten signature in black ink, appearing to read "Stu Marckoon".

Stu Marckoon, Treasurer  
Town of Lamoine

Enclosures: Ellsworth American Bill, US Postal Service receipt copy.

A handwritten signature in black ink, appearing to read "John".

**ELLSWORTH AMERICAN, INC.**30 WATER STREET  
ELLSWORTH ME 04605

(207) 667-2576

Fax(207) 667-7656

Advertising Memo Bill

02/2010		TOWN OF LAMOINE	
70.12			
.00	.00	.00	.00
1	02/12/10	1666 DEWAY.	1666

TOWN OF LAMOINE STU MARKOON 606 DOUGLAS HIGHWAY LAMOINE ME 04605	Amount Paid:  Comments:  Ad #: 105765
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Please Return Upper Portion With Payment

2/18/10	105765 EPF	DOUG GOTT PERMIT 02/1	1X 3.00 3.00	2 12.30	70.12	70.12
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**Statement of Account - Aging of Past Due Amounts**

0.00	0.00	0.00	0.00		70.12
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**ELLSWORTH AMERICAN, INC.**

(207) 667-2576

\* UNAPPLIED AMOUNTS ARE INCLUDED IN TOTAL AMOUNT DUE

105765	02/2010	1666	1666	TOWN OF LAMOINE
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Label #:

Issue PVI:

=====

\$5.54

ELLSWORTH ME 04605  
Zone-0 First-Class  
Letter

\$0.44

0.50 oz.

Return Rcpt (Green  
Card)

\$2.30

Certified

\$2.80

Label #:

70081300000136133707

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Issue PVI:

\$5.54

ELLSWORTH ME 04605  
Zone-0 First-Class  
Letter

\$0.44

0.50 oz.

Return Rcpt (Green  
Card)

\$2.30

Certified

\$2.80

Label #:

70081300000136133691

=====

Issue PVI:

\$5.54

ELLSWORTH ME 04605  
Zone-0 First-Class  
Letter

\$0.44

0.50 oz.

Return Rcpt (Green  
Card)

\$2.30

Certified

\$2.80

Label #:

70081300000136133684

=====

Issue PVI:

\$5.54

Total:

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\$127.42

Paid by:

\$127.42

Debit Card

Account #:

XXXXXXXXXXXX6085

Approval #:

Transaction #:

917

23903210276

Receipt#:

002231

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call 1-800-Stamp24. Go to  
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1-800-ASK-USPS.

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C

Certified

\$2.80

Label #:

70081300000136133783

=====

Issue PVI:

\$5.54



## Lamoine Planning Board

606 Douglas Hwy  
Lamoine, ME 04605  
(207)-667-2242

[www.lamoine-me.gov](http://www.lamoine-me.gov)  
[town@lamoine-me.gov](mailto:town@lamoine-me.gov)

# NOTICE OF PUBLIC HEARING

Having found the applications complete, the Lamoine Planning Board will hold a public hearing in regard to a Gravel Extraction Permit Application and a Site Plan Review Application submitted by Doug Gott & Sons, Inc. on Tuesday, March 2, 2010 beginning at 6:30 PM at the Lamoine Town Hall, 606 Douglas Highway, Lamoine, Maine. The application proposes to establish a gravel pit operation on Lamoine Tax Map 3 Lot 8. A copy of the plan is available at the Lamoine Town Hall for public inspection during regular business hours. Members of the public may speak for or against the proposal. Following closure of the hearing, the Lamoine Planning Board may take action in regard to final approval of both applications.

Ordered February 2, 2010 by:

Gordon Donaldson, Chair  
Lamoine Planning Board

November 13, 2009

Steve Salisbury  
P.O. Box 652  
Oak Street, Suite 1  
Ellsworth, Maine  
04605

Michael F. Garrett, Secretary  
Lamoine Planning Board  
P.O. Box 1615  
Ellsworth, Maine  
04605

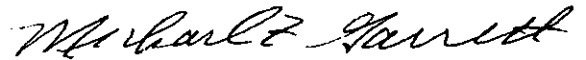
Steve:

After you left the Lamoine Planning Board meeting Tuesday night (enough was enough!) a Board member recalled for our attention the fact the Stephen's Pit (Map 3, Lot 8) is subject to a Site Plan review. Our assumption is more than 10,000 square feet of earth material will be somehow altered within a five year period – a circumstance which triggers a Site Plan review.

I was instructed to so inform you.

Look forward to seeing you on December 1<sup>st</sup> for another round of paper shuffling.

Regards,

A handwritten signature in black ink, appearing to read "Michael F. Garrett", written in a cursive style.

Michael F. Garrett, Secretary

November 10, 2009

TO: Members of the Planning Board  
From: Michael Garrett, Secretary  
Subject: Willem Brutsaert's Response to my Queries:

Query #1. Would you give us the names of one or two "independent" (meaning their results will not be skewed to the interests of the payer) hydrologists capable of conducting gravel pit and related water studies?

Answer #1.

Woodard and Curran (Portland and Bangor)  
Fessenden Geo-Environmental Services. (smaller firm, Bangor area).  
Ransom Environmental Consultants, Inc.  
Peter Garrett – Independent consultant. May no longer be in business. Not a relative!

Query #2. Could you please tell us what **specific** information to request in a hydrological study to enable us to make a reasoned decision.

Answer Query #2. **"Since groundwater is the sole source water supply of Lamoine, the Town has the obligation to protect its quantity and quality. Thus the applicant has to demonstrate that their project will not affect quantity or quality of both public and private water supply systems of the abutters, as required by the new Land Use Code. This means a detailed flow study of the surrounding area is required, including time of travel flow lines and the movement of a pollution 'plume' in case of an accidental spill. I could help you formulate specific questions upon review of an application."**

## MINUTES OF THE LAMOINE PLANNING BOARD

March 2, 2010

Draft Copy – Subject to Change

### PUBLIC HEARING

#### Site Plan Review & Gravel Permit Application, D. Gott & Sons, Map 3, Lot 8

Chairman G. Donaldson called the hearing to order at 6:30 pm.

Board Members Present: D. Bamman, G. Donaldson, J. Gallagher, M. Garrett, J. Holt, M. Jordan, C. Tadema-Wielandt (7:00 pm).

CEO: D. Ford

Members of the Public in Attendance: A. Blasi, C. Curtis, K. DeFusco, C. deTuede, P. Downey, D. Fickett, H. Fickett, D. Jones, C. Lippitt, J. Moore, S. Salisbury, T. Smith, V. Sprague, J. Willis, T. Willis.

A number of people rendered statements, comments and questions. Among them:

- C. deTuede read a written statement from C. Korty. Chief among her concerns are issues of highway safety, traffic congestion and a potential unsightly impact on the scenic and natural setting of the proposed pit.
- Jim Willis of Mill Road noted a growing number of dump trucks traveling Mill Road. "Would opening this pit create more traffic?" He also is concerned about the safety of bicycle riding children. Too, he noted noise and the need for more frequent window washing on account of dust raised by large trucks.
- C. Lippett summarized the results of S. W. Cole's hydrologic examination of the pit – a study required by the Planning Board.
- V. Sprague was one of several to fear declining property values as more gravel pits infringe closer to residential sites.
- D. Jones can hear noise from loaders and tailgate closing from his home.
- C. Curtis wondered if signage could be provided near her home so traffic would slow down at a curve in the road.
- Planning Board member J. Gallagher read a statement in which he contended the lot in question represents a "unique natural community" **in the area in which it is located** – an area surrounded by actively mined pits. Clearing of this (Stephens) pit for gravel mining would, contrary to Town Ordinances, destroy a 'unique natural community'.
- J. Willis also noted the presence of endangered Trillium on the site.

There being no further comments, C. Donaldson closed the public hearing at 7:12 pm

### MARCH MONTHLY MEETING OF THE PLANNING BOARD

G. Donaldson called the meeting to order at 7:15 pm.

**Minutes, February 2, 2010.** These listed amendments to the Minutes were offered and accepted:

- Under members present, "Jordon" should be Jordan.
- Under "Old Business – B", the apostrophes contained in the words "Stephens" and "Billings" should be omitted.
- Under "Old Business -3 b" the word "Deerwoldz" should be "Deerworldz".
- Under "old Business -3" – The sentence reading "The Board understands the permit expires in 2011 and that beyond the expiration D. Gott plans no further activity erroneously states cessation of activity on ALL FOUR of these pits will commence in 2011. In fact ONLY mining of the Deerworldz pit will cease.

The minutes were accepted as amended.



## OLD BUSINESS

1. **Site Plan Review Completeness – Doug Gott & Sons, Map 3, Lot 8.** Conditions set by the Board (a statement for the record indicating the project is wholly within the aquifer and a more detailed description of proposed activity) have been met. J. Holt moved and M. Garrett seconded a motion to find the application complete. The vote was unanimous.
2. **Gravel Permit Application – Doug Gott & Sons, Map 3, Lot 8.** Conditions set by the Board (extend the map's contour lines to the Billings Pit; add the word "proposed" to the map indicating the proposed road into the pit; and state in the application that no mining will occur lower than a depth of 110 feet) having been met, G. Donaldson moved and J. Gallagher seconded a motion to find the application complete. The vote was unanimous.
3. **Action on the Site Plan Review Application.** The Board undertook a review of Site Plan review standards as required by the Ordinance. In this undertaking the Board found the following items fail to fully meet the standards.
  - a. Standard #1. "Preserve and Enhance the Landscape – Two voted the standard to have been met, two voted it had not been met and one abstained.
  - b. Standard #6 Buffering & Screening a unanimous vote held this standard is not met. The Ordinance calls for 50 feet of screening (Section 14 F 8). Once cleared to the 50 foot line separating the mining operation from three residential homes, the natural buffer – one of tall trees and relatively little under growth – is not sufficient to "screen" the operation from the abutters.
  - c. Standard #10. Groundwater Protection. 2 board members felt this standard was satisfied; 3 did not. The dissenters note the application does not contain plans to monitor water quality and, given that the flow of groundwater is toward Rt. 184, it could affect the quality and quantity of wells across the road.
  - d. Standard #16. Comprehensive Plan. Is the proposed operation compatible with the purpose and intent of Lamoine's Comprehensive Plan? No one voted affirmatively; dissent was unanimous. The rationale for the negative vote is largely contained in Planning Board member John Holt's statement, delivered during deliberations of this issue – a statement which echoes the several concerns raised by neighboring landowners during the Public Hearing. That rationale will be formally presented as "Findings" when they are formulated. S. Salisbury, representing the applicant, agreed to extend the deadline for official "Findings" until the Board's April 13, 2010 meeting.
4. **Action on the Gravel Permit.** The Board considered the review standards set forth in the Ordinance for issuance of a gravel permit. By a vote of zero in favor, four opposed and one abstention review standard #6 (Will not adversely affect surrounding properties) was deemed to fall short of the standard. The rationale is contained in b and d. above.

## **NEW BUSINESS**

**Request of Attorney Margaret Jeffrey re: subdivision lot line, Map 3, Lot 39-8.** To satisfy potential insurance/mortgage/title issues, Attorney Jeffrey requested that all members of the Board sign the following statement:

"It is the position of the Town of Lamoine Planning Board that the modification created by the land swap between Lot 7 and Lot 8 of the Applewood Shores Subdivision by deed dated September 30, 2003 and recorded in Book 3760, Page 214, and deed dated October 14, 2003 and recorded in Book 3760, Page 212 does not require subdivision review and approval."

Since the subdivision is over five years old and the land swap does not create a non conforming lot, the Code Enforcement Officer informs the Board the issue is outside the jurisdiction of the Board. Reluctant to engage in a decision beyond the scope of the Board's authority, the Board declined to have all members sign. The Board did agree, however, that Chairman Donaldson could (and did) sign as Board spokesman.

## **OTHER BUSINESS**

1. Chairman G. Donaldson called the Board's attention to a Maine Model Wind Energy Facility Ordinance for the Board's future consideration.
2. Final approval was given to proposed amendments to the Building and Land Use Ordinance concerning groundwater and home occupations. At Town meeting J. Holt is the designated "expert" on the ground water proposals (i.e. he is principally but not solely responsible for fielding questions from the floor.) C. Tadema-Wielandt will do the same for questions about proposals for home occupations.

Respectfully submitted,  
Michael F. Garrett, Secretary

## **PENDING COMMITMENTS**

**April 7, 2010 – Town Meeting. Lamoine School 6:00 pm**

**April 13, 2010 – Monthly Board meeting – Town Hall – 7:00 pm.**

[Holt comments 3/2/10. Site Plan Review. Gott application for gravel permit of Stephens lot.]

As I ponder the wisdom of approving or denying a permit for this particular project, I want to make sure that I consider both the trees and the forest, that is, both the project in and of itself, and the project in its larger context of the Town of Lamoine as a whole. Considered as a discrete, particular project, I am hard pressed to find any reason to deny the permit. The applicant has presented information which has assured me, to a large degree, that the quality and quantity of the water contained in the aquifer beneath the surface will not be adversely affected nor will the quality and quantity of the water for the neighbors to the north and west be adversely affected by the proposed excavation and the storage of gravel, loam, and sand. I would like more assurance that the groundwater divide which is located somewhere to the east of the Stephens Pit could be more precisely located so that I could be sure, with a larger degree to confidence, that the boundary which separates the aquifers to the east and to the west would not be breached and cause a problem. But I am satisfied that the study presented by S. W. Cole is accurate in its broad outline and in its assurance that the proposed pit will not jeopardize the apparent groundwater divide. Of course, there is always the danger of a spillage of petroleum products which would cause some pollution of the groundwater, but as far as I know the applicant has a fine track record with regards to the use of equipment on the sites.

Nevertheless, the review criteria which calls for the proposed use to be in conformance with the Comprehensive Plan of Lamoine mandates a duty to view any project within its larger context of the Town as a whole and Town's vision for itself as a community.

The comprehensive plan of the town envisions Lamoine as essentially a residential community, with the residents enjoying features typical of a rural community, with perhaps many of them engaging in a variety of home occupations, including agriculture, and with limited commercial ventures taking place. Large scale industrial uses would constitute something of a threat to the pastoral nature of the town. Consequently, most of the Town of Lamoine is zoned Rural / Agricultural. The comprehensive plan acknowledges also the existence of significant deposits of sand and gravel and states matter-of-factly that extraction of sand and gravel will take place. There is thus the expectation that the Town as a residential community and as a source of sand and gravel will need to coexist. However, it is clear that the Planning Board is given the authority to make a judgment about whether or not any proposed industrial use, such as sand and gravel extraction, in

the rural and agricultural zone, is appropriate or not, and to what extent. For me, the fundamental question becomes the balance that needs to be achieved for this coexistence to be satisfactory to the citizens of Lamoine and the quality of life to which we feel we are entitled as a rural community.

To be sure, some of the sand and gravel extraction is done by Lamoine residents who have need of the various earth materials as they pursue their occupations as contractors, for such purposes as septic systems, driveways, backfill for foundation work, sanding driveways, etc. As fellow residents, we understand these needs and uses, as limited and as periodic as they are.

However, the great bulk of the sand and gravel extraction is undertaken by a few non-resident corporations with land holdings of their own in Lamoine as well as extraction leases on land owned by others. These large corporations by and large remove the sand and gravel from the town limits for their operations elsewhere in the county.

The level of sand and gravel excavation is tremendous. With the exception of Sundays, on every day of the year, including holidays, gravel trucks travel up and down the roads of Lamoine. On many occasions I have logged the number of trucks that have passed by my house on Lamoine Beach Road, and can say with certainty that the number of daily trips frequently is in the hundreds. Empty trucks roll in Town well before 6:00 a.m., often waking me before 5:30 a.m. The gravel operations currently are permitted until 6:00 p.m., or sundown, whichever occurs later a minimum 12-hour day. For a resident who lives along certain sections of Lamoine Beach Road, and Jordan River Road, it feels like one is living in an industrial zone, not a rural agricultural country setting.

Further complicating the issue is that, according to the Comprehensive Plan, the land extending from the Village (Lamoine Corner) to Blunt's Pond appears to have the most suitable soils for residential housing in the Town. Thus, it is most disconcerting that nowhere is sand and gravel extraction more concentrated than in this same area, an area bounded broadly by portions of the Mill Road, Walker Road, Asa's Lane and Lamoine Beach Road.

When one studies the tax maps of the Town, one finds that the three companies of Doug Gott, John Goodwin and RJ Jordan currently own nearly 326 acres in this area. With the single exception of the 5.6 acre Stephens Lot under consideration tonight, all of the parcels owned by these companies contain currently licensed gravel pits. In addition, Gott has current agreements with two landowners whose parcels total 54 acres which allow Gott to extract sand and gravel. A recent agreement with the Town of Lamoine had permitted Gott to extract gravel from portions of a town-owned parcel of nearly 40 acres. The result is current and past extraction on a combined parcel of about 415 acres nearly wholly contained within the identified sand and gravel aquifer and

on the land in town deemed most suitable for residential development. The visual result of the extraction is clearly visible from the top of Cadillac Mountain as a brownish scab on the otherwise green landscape of Lamoine. Some of the land in this large area has been mined literally to the water table and some to as little as 2 feet above the water table. Current permits allow excavation to within 5 feet of the water table. Again, the Comprehensive Plan understands this area of Town to have some of the more suitable soils for residential development. One can raise legitimate questions about the usefulness of the land for housing purposes once it has mined to the extent that it already has been and will continue to be in currently active pits.

The proposed pit on the so-called Stephen's Lot is located on the edge of the existing permitted area, and abuts three residential properties along its northern boundary and is across Lamoine Beach Road from several others. Were a permit granted for this proposed pit, it would expand the sand and gravel extraction area yet further into land zoned essentially for residences, and radically change the topography of the parcel, including removal of trees and topsoil from portions of the lot, further despoiling the visual appeal of the area for years to come.

The applicant has stated that the use for the pit will be primarily stockpiling of sand, loam and gravel. It would not provide a significant source of fresh sand and gravel. Gott owns other pits in the vicinity on which stockpiling could easily take place without despoiling additional land. In my opinion, there would be no economic hardship inflicted on a corporation of Gott's size. There is no compelling need for this particular parcel to be permitted as a gravel pit.

In my opinion, in keeping with the spirit of the Town's Comprehensive Plan, in light of the scope of sand and gravel excavation already permitted in this section of Town, and considering other matters of noise, gravel trucks on the roads, and potential for water pollution, there is sufficient reason to justify a conclusion that the proposed project is not in conformance with the Comprehensive Plan and I shall vote accordingly.

**Lamoine Planning Board  
Lamoine, Maine  
April 13, 2010**

**FINDINGS**

**Map 3, Lot 8 – The “Stephens” Lot  
Application for Site Plan Review Permit**

On March 2, 2010, the Lamoine Planning Board unanimously denied a Site Plan Review permit sought by Doug Gott & Sons for the purpose of developing a gravel pit on the lot – Map 3, Lot 8, known as the “Stephens” lot.

Section J of the Site Plan Review Ordinance states: *“The Board shall approve the application unless the proposal does not meet the intent of one or more of the following criteria provided that the criteria were not first waived by the Board.”*

The Board found that the application failed to meet the following three criteria:

**Criterion #6. Buffering and Screening.** By a unanimous vote, the Board found that the requirement for *50 feet of screening* (Section 4 F 8) was not met. Once cleared to the 50 foot line separating the mining operation from three residential homes, the natural buffer – one of tall trees and sparse undergrowth – is not sufficient to “screen” the operation from abutters.

**Criterion #10. Groundwater protection.** By a vote of 3-2, the Board found that the application does not adequately account for the *protection of water quality*. A majority found that, because the flow of groundwater is toward Route 184, the proposed activity could negatively affect the water quality in wells serving residences across the road (approximately 150 – 300 feet from the pit boundary).

**Criterion #16.** *“The development shall be in conformance with the Comprehensive Plan.”* The Board, by unanimous vote, found the following.

1. The lot in question (Map 3, Lot 8) is in a Rural/Agricultural zone. The Town’s Comprehensive Plan envisions a Rural/Agricultural Zone as having limited commercial development. (See Policies and Policy Implementation Recommendations of the Comprehensive Plan Committee – 1. Orderly Growth and Development, Paragraph G of the Comprehensive Plan.)

This vision is reaffirmed in Part 1, Section E, Purpose of the Districts, paragraph 3 of the Lamoine Building and Land Use Ordinance which reads: (The purpose of) Rural and Agricultural Zone: *“To encourage a mixture of residential, agricultural and limited commercial uses.”* While sand and gravel extraction may take place within the Rural and Agricultural Zone, any industrial use, including sand and gravel extraction, requires a determination by the Planning Board that such a use is appropriate for the site within the context of the overall purpose of the Rural and Agricultural Zone.

The Board’s issue is the extent of sand and gravel extraction in a zone where such use is to be limited and needs to coexist with residential and agricultural uses.

A review of the assessors' tax maps in the Town office reveals that three companies (Doug Gott & Sons, John Goodwin, Jr. and R.J. Jordan) currently own lots with existing gravel extraction permits comprising nearly 275 acres in the area bound broadly by portions of Mill Road, Walker Road, Lamoine Beach Road and Asa's Lane. Gott also holds extraction agreements with two other landowners to extract sand and gravel in two additional parcels totaling 54 acres. In the recent past, Gott extracted sand and gravel from a town owned lot of about 40 acres in the same area. Altogether, *nearly 370 acres* which, in effect, comprise one large lot, are or have been used for gravel extraction within the Rural/Agricultural Zone in that part of Lamoine under discussion. The Stephens Lot, which abuts three residential properties and is directly across Route 184 from several others, would add 5.6 acres to this large parcel.

The Board is of the opinion that since the purpose of the Rural and Agricultural Zone recommended in the Comprehensive Plan is to encourage residential and agricultural developments, to permit limited commercial developments and to discourage heavy industrial use, a permit to develop yet another parcel as a gravel pit in this immediate area is contrary to that expressed purpose, and thus should not be granted.

2. The Comprehensive Plan of the Town envisions Lamoine as essentially a residential community. With regard to residential developments, the Plan identifies the "village area to Blunt's Pond" as having the most suitable soils for residential housing. It also notes that a significant portion of Lamoine's sand and gravel aquifer is located in this area. The current widespread gravel extraction operations described above are located precisely in this area deemed desirable for residential development and on top of the existing sand and gravel aquifer. Both concerns are addressed in the Comprehensive Plan.
3. Additionally, Section F of the Lamoine Site Plan Review Ordinance notes that one of the purposes of the site plan review, in addition to implementing the policies contained in the Lamoine Comprehensive Plan, is to balance the rights of landowners to use their land with the corresponding rights of abutting and neighboring landowners to live without undue disturbances from nuisances such as, but not limited to, noise, smoke, fumes, dust, odor, glare, traffic, storm water runoff or the pollution of ground and surface water.

At the March 2, 2010 public hearing on Gott's application to obtain a gravel permit for gravel creation from a new pit on this lot, several residents stated their complaints concerning current gravel excavation operations in the neighborhood. Complaints expressed included excavation equipment noise, gravel trucks entering the many pits on Rt. 184 as early as 5:30am, the high level of truck traffic on roads (with attendant dust, dirt and safety issues) despoiling property. They worry another operational pit still closer to their residential homes would exacerbate these conditions.

Also expressed at the public hearing was concern about the impact of extensive gravel mining operations on the value of residential property. Given that the proposed use would extend mining operations even closer to residences, visual degradation, dust, noise and high truck traffic volume will likely compromise property values of these residences. The Board agrees that these are legitimate concerns.

4. A final factor weighing in the Board's denial of the permit is the applicant's stated proposed use of the lot. In response to a specific Board request that the applicant state in detail on the application to what use the pit would be put, the applicant wrote: "once the lot is cleared and contoured as shown on the site plan (the proposed use) was the STORAGE of sand, loam and gravel." Let the record reflect the applicant has several other nearby, permitted lots in the immediate area on which to store materials.

## **FINDINGS**

### **Map 3, Lot 8 – The "Stephens" Lot Application for Gravel Extraction Permit**

Review Standard #6 of the Gravel Ordinance, Section 8 D 6 ("will not adversely affect surrounding properties") led the Board to deny issuance of a Gravel extraction permit. (See "buffering and screening" above). In response to a motion stating the applicant met this standard, the vote was zero in favor; four opposed and one abstention. The Board's findings in this regard are:

1. Given that the proposed use would extend mining operations even closer to residences, visual degradation, dust, noise and high truck traffic volume will likely compromise a) the quality of life of abutting residential property owners and b) the property values of these residences. See above findings.
2. Inadequate buffering and screening (See Criterion #6 "Buffering and Screening" above).

By a unanimous vote of those Board members voting at the April 13, 2010 Planning Board meeting (4 – 0), these findings are hereby set forth.



(Signed: Gordon Donaldson, Planning Board Chair)

4/15/10

(Date)



**Doug Gott & Sons**  
**Addendum to Appeal Applications**

**I. SITE PLAN REVIEW APPLICATION**

The denial of the applicant's site plan application was based on the applicant's failure to meet three Site Plan Review Ordinance standards. The applicant appeals those determinations, as set forth below:

**A. Standard #6, Buffering and Screening**

According to the Board, once the property is cleared up to the required 50' setback, there would not be enough of a natural buffer left sufficient to screen the gravel operation from the abutters.

The Planning Board erred in finding that the applicant failed to meet the standards set forth in Section J.6 of the Lamoine Site Plan Review Ordinance. That standard does not require that the natural buffer left after clearing to the 50' setback be sufficient to screen the operation; rather, this is more of "setback" requirement that would not be met if the applicant had proposed extending the operation closer to the property lines than 50 feet. The Gott application specifically calls for a 50-foot buffer to be retained on the two sides of the property that abut other landowners, and therefore meets this requirement.

Additionally, the standard specifically contemplates the use of man-made materials (fencing), or additional planting in order to accomplish the appropriate amount of screening. During deliberations, the Planning Board specifically stated that this standard could be met by imposing conditions upon the applicant which ensure the buffering and screening requirements were met. Therefore, an outright rejection of the application based on Standard #6 was erroneous and should be reversed.

**B. Standard #10, Groundwater Protection**

The site plan application indicates that the groundwater protection standards will be met, and included a professionally engineered hydrogeological services report stating that the public water supply would not be impacted. Expert testimonial evidence established the intent to install a new monitoring well once the site is prepared, and indicated the plan adequately accounts for the protection of water quality.

Nevertheless, the Board found that the groundwater protection standards would not be met. This finding constitutes reversible error.

### **C. Standard #16, Comprehensive Plan Compliance**

According to the Board, the proposed gravel operation is inconsistent with the purpose and intent of the Lamoine Comprehensive Plan. This finding is erroneous for several reasons.

First, the Comprehensive Plan says nothing about limiting the amount of gravel extraction activities within the town. Indeed, the Plan specifically recognizes gravel mining as the “major commercial activity” with the Town, and only mentions the intent to curtail “heavy industrial development.” Neither the Comprehensive Plan nor the Land Use Ordinance define sand and gravel extraction as a “heavy industrial” activity. Additionally, the town’s land use ordinance does not limit further gravel extraction activities in this area. The Planning Board’s determination, therefore, that this permit application is for an “industrial use” (see page 1, paragraph 8 of the board’s “Findings”) is patently incorrect and should be reversed.

Second, the Planning Board’s determination that the proposed operation would entail significant “visual degradation, dust, noise and high truck traffic volume” to the point that surrounding property values would be affected simply does not stand to reason. As the Board noted (and as contemplated in the Comprehensive Plan), there is already significant gravel extraction activity in this area. In addition, the Board noted that the applicant intends to use the lot primarily for the “storage of sand, loam and gravel,” adjacent to the already-operational gravel pit on the existing “B&H Pit” owned by Gott, not as an additional extraction area. Therefore there is not likely to be a significant increase in the level of noise and “visual degradation” over that already in existence.

Finally, and most significantly, the imposition of performance standards based on a town’s Comprehensive Plan has been summarily rejected by the Law Court. *See Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30 ¶ 24 (“A comprehensive plan imposes an obligation on the town, not on private citizens or applicants for permits.”). Therefore, the Planning Board’s rejection of the site plan application on the basis that such operation would not be consistent with the intent of the Lamoine Comprehensive Plan constitutes reversible legal error.

## II. GRAVEL PERMIT APPLICATION

The Board denied the gravel extraction permit application based on the applicant's failure to meet the requirements of standard #6, Section 7 D 6 of the Gravel Ordinance.

The Board found that the operation would "adversely affect surrounding properties" because it would compromise the quality of life of abutting residential property owners, and reduce property values. This conclusion, however, was based on the testimony of residents regarding the pre-existing operations, not the actual proposed use of the Stephens lot as simply primarily a storage area adjacent to the existing Gott operation. Therefore this finding is in error.

The Board also found that there would be inadequate buffering and screening of the operation and referred to the site plan ordinance standard for buffering and screening as set forth above. However, the Board failed to make findings based on the Gravel Ordinance standard for screening, as contained in Section 8 B; therefore the Board's denial of the permit application for gravel extraction should be reversed based on failure to apply the appropriate standard.

The applicant also appeals this decision for the same reasons as those stated in Section I above. Further, the applicant reserves the right to supplement this appeal as necessary prior to the ZBA's public hearing on this matter.